

**ENVIRONMENTAL ASSESSMENT
U. S. DEPARTMENT OF ENERGY
CONVEYANCE OF PARCEL ED-6
TO THE CITY OF
OAK RIDGE, TENNESSEE**



August 2005

**U. S. Department of Energy
Oak Ridge Office
Oak Ridge, Tennessee**

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Environmental Assessment
U. S. Department of Energy
Conveyance of Parcel Ed-6
to the City of
Oak Ridge, Tennessee

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Prepared for
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Oak Ridge Office
Oak Ridge, Tennessee

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ACRONYMS

BORCE	Black Oak Ridge Conservation Easement
CEQ	Council on Environmental Quality
<i>CFR</i>	<i>Code of Federal Regulations</i>
CO ₂	carbon dioxide
DOE	U. S. Department of Energy
EA	environmental assessment
EPA	U. S. Environmental Protection Agency
ETTP	East Tennessee Technology Park
FIR	Federal Industry and Research
FWS	U. S. Fish and Wildlife Service
FY	fiscal year
GSA	General Services Administration
LESA	Land Evaluation and Site Assessment
NAAQS	National Ambient Air Quality Standard
NEPA	National Environmental Policy Act of 1969
NERP	National Environmental Research Park
NO ₂	nitrogen dioxide
NRHP	National Register of Historic Places
O ₃	ozone
ORR	Oak Ridge Reservation
PIF	Partners in Flight
PILT	payment-in-lieu-of-tax
PM ₁₀	particulate matter less than 10 microns in size
PM _{2.5}	particulate matter less than 2.5 microns in size
ROI	region of influence
ROW	right-of-way
SNS	Spallation Neutron Source
SO ₂	sulfur dioxide
SR	State Route
T&E	threatened and endangered
TN-SHPO	Tennessee State Historic Preservation Officer
TVA	Tennessee Valley Authority
TWRA	Tennessee Wildlife Resources Agency
WMA	Wildlife Management Area

1.0 INTRODUCTION

1.1 PURPOSE AND NEED FOR U. S. DEPARTMENT OF ENERGY ACTION

The proposed action evaluated in this environmental assessment (EA) is the U. S. Department of Energy (DOE) conveyance of approximately 362 acres of underutilized property known as Parcel ED-6 to the city of Oak Ridge, Tennessee. The purpose of the proposed action is to transfer DOE-Oak Ridge Office real property for economic development.

The need for DOE action is the result of a request from the city of Oak Ridge to transfer Parcel ED-6 under 10 *Code of Federal Regulations (CFR)* 770. This regulation, entitled *Transfer of Real Property at Defense Nuclear Facilities for Economic Development*, allows DOE to transfer real property to local communities for economic development purposes ([Appendix A](#)). The proposed action would also help the city to meet the goals stated in the Oak Ridge City Council's Strategic Plan, *The Path Forward: 2003-2007*, which identifies the development of new housing as a major initiative. DOE also recognizes that transferring land for local economic development purposes can benefit the federal government by reducing financial costs associated with ownership and management of underutilized and excess real property.

1.2 BACKGROUND

Parcel ED-6 is located within the city limits of Oak Ridge ([Fig. 1.1](#)). The general location of the property is west of Wisconsin Avenue, south of Whippoorwill Drive, north of the Oak Ridge Turnpike [State Route (SR) 95], and east of the Horizon Center Industrial Park.

Parcel ED-6 also encompasses the area included in the Oak Ridge Reservation (ORR) Land Use Planning Process. This land use planning effort took place in 2001 and 2002 to develop suggestions for the utilization of land in the northwest portion of ORR. As part of the process, four land use scenarios were developed and analyzed in the technical report prepared for the process (ORNL 2002). The four scenarios included a greenspace emphasis (Scenario 1), development emphasis (Scenario 2), modified Parcel ED-3 (Scenario 3), and less development (Scenario 4). Land uses within each scenario included greenspace, conservation, and research (all four scenarios); light industrial/commercial (all four scenarios); office (Scenario 2); residential (Scenarios 2, 3, and 4); and open space (all four scenarios). Environmental impact analyses were performed for the four scenarios. Direct, indirect, and cumulative impacts were determined whenever possible. Certain resource areas (such as economics and biological resources) received proportionately more analytical emphasis, because these areas were deemed to be the most important to members of the Focus Group¹.

The Parcel ED-6 area in the land use planning process included about 328 acres. However, it did not include the area between the North Boundary Greenway and the DOE boundary east of Wisconsin Avenue and the Tennessee Department of Transportation right-of-way (ROW) located along State Route 95. It also included approximately 36 acres that are not included within the current Parcel ED-6 boundary because that area was added to the Black Oak Ridge Conservation Easement (BORCE).

¹ The Focus Group was comprised of a broad cross-section of the community, as well as representatives from agencies and organizations having an interest in the future of Oak Ridge Reservation land.

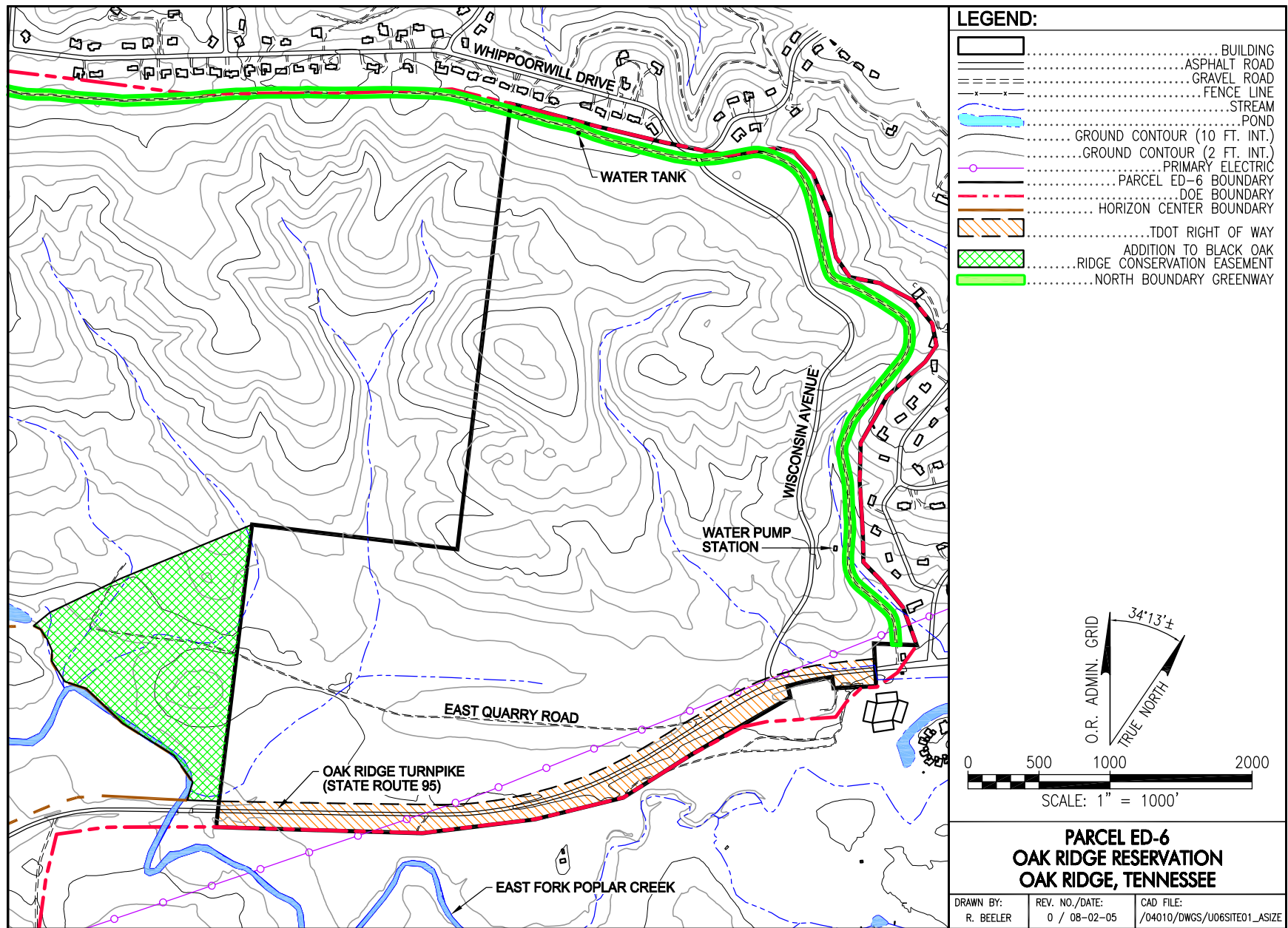


Fig. 1.1. Parcel ED-6 vicinity map.

For the four land use scenarios considered, there was general agreement on the use of approximately 87% of the land under consideration. The Focus Group had mixed feelings about uses for the remaining land, as reflected in discussions of and conclusion for the four land use scenarios. While there were some preferences, no one scenario could be judged as representing a consensus of the Focus Group. In the September 2002 *Final Report of the Oak Ridge Land Use Planning Focus Group*, the members of the Focus Group agreed to present these mixed results, leaving their interpretation to DOE (Focus Group 2002).

As part of the public involvement process for this EA, DOE held an informal information session on November 18, 2004, at the DOE Information Center in Oak Ridge. Approximately 50 people attended the meeting. Comments received during and after the meeting dealt primarily with the North Boundary Greenway, impacts of the potential development on Wisconsin Avenue and the homes along Whippoorwill Drive, and the relationship of Parcel ED-6 to the ORR Land Use Planning Process and the BORCE.

1.3 SCOPE OF THIS ENVIRONMENTAL ASSESSMENT

This EA presents information on the potential impacts associated with the proposed conveyance of Parcel ED-6 to the city of Oak Ridge. DOE has prepared this EA to assess the potential consequences of its activities on the human environment in accordance with the Council on Environmental Quality (CEQ) regulations (40 *CFR* Parts 1500–1508) implementing National Environmental Policy Act of 1969 (NEPA) and DOE NEPA Implementing Procedures (10 *CFR* 1021). If the impacts associated with the proposed action are not identified as significant as a result of this EA, DOE shall issue a Finding of No Significant Impact and will proceed with the action. If impacts are identified as potentially significant, an Environmental Impact Statement will be prepared.

This EA (1) describes the existing environment for Parcel ED-6 relevant to potential impacts of the proposed action and alternatives; (2) analyzes potential environmental impacts that could result from the proposed action; (3) identifies and characterizes cumulative impacts that could result from the proposed action in relation to other ongoing or proposed activities within the surrounding area; and (4) provides DOE with environmental information for use in prescribing restrictions to protect, preserve, and enhance the human environment and natural ecosystems.

Certain aspects of the proposed action have a greater potential for creating adverse environmental impacts than others. For this reason, CEQ regulations (40 *CFR* 1502.1 and 1502.2) recommend a “sliding-scale” approach so that those actions with greater potential effect can be discussed in greater detail in NEPA documents than those that have little potential for impact.

Implementation of the proposed action would also require compliance with Sect. 120 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980. Section 120(h) requires the identification of uncontaminated property transferred by federal agencies. This identification is based on an investigation of the property to determine the presence or likely presence of a release or threatened release of any hazardous substance or any petroleum product or its derivatives on the property.

This compliance is being addressed in a separate report being prepared in conjunction with the EA.

2.0 DESCRIPTION OF ALTERNATIVES

2.1 PROPOSED ACTION

DOE has determined that Parcel ED-6 is underutilized and under 10 *CFR* Part 770 proposes to convey this property to the city of Oak Ridge for the development of new housing.

For the purposes of analysis, this EA assumes that after Parcel ED-6 is conveyed, the city of Oak Ridge would sell the property to a private developer. City staff would review the residential development plans to ensure compliance with all applicable zoning ordinance requirements and other engineering-related ordinances and standards. For bounding purposes, it is also assumed that the new residential development would be concentrated on the portion of the parcel that is located west of Wisconsin Avenue and north of East Quarry Road. Constraints on developing the other portions of the parcel include the Tennessee Valley Authority (TVA) power line and ROW, steep topography (i.e., slopes >10%), and the North Boundary Greenway Trail. Thus, all 362 acres are not equally developable.

Also, as part of the proposed action, DOE would need to construct a new boundary patrol road between the western boundary of Parcel ED-6 and the remaining DOE property. This new road would connect into the existing North Boundary Patrol Road to provide continued security and fire suppression access for that portion of ORR and would separate the proposed residential development from the proposed BORCE area. To comply with the National Fire Protection Association wildland fire standards, the new road would need to be 20-ft wide with 13.5-ft clearance over the road to allow access of fire-fighting vehicles; an extra 5 ft on either side of the road would also be cleared, making a total 30-ft-wide area that could act as a fire break.

2.2 NO-ACTION ALTERNATIVE

Under the no-action alternative, which provides an environmental baseline with which impacts of the proposed action and alternatives can be compared, Parcel ED-6 would not be conveyed for development. The parcel would be retained as DOE property and would continue in its current use (e.g., utility easement, limited security and facility buffer, wildlife management, forestry, and environmental monitoring).

2.3 MIXED DEVELOPMENT ALTERNATIVE

This alternative is similar to the proposed action because the same amount of acreage would be conveyed to the city of Oak Ridge. However, in addition to residential development, a portion of Parcel ED-6 could be used for commercial development (e.g., retail businesses or offices). The most likely location for any commercial development would be the portion of the parcel located between the Oak Ridge Turnpike (SR 95) and East Quarry Road. This alternative would also require the construction of a new boundary patrol road as described for proposed action.

2.4 CONSERVATION EASEMENT ALTERNATIVE

Under this alternative, DOE would include the portion of Parcel ED-6 located west of Wisconsin Avenue into the BORCE area. The state of Tennessee, DOE, U. S. Fish and Wildlife Service (FWS), and TVA, in response to natural resource damages at the Lower Watts Bar Reservoir, developed this

conservation easement through a joint effort. The approximately 3000 acres of DOE ORR land will be managed in accordance with state laws addressing natural areas and wildlife management areas (WMAs). Additional information on the conservation easement can be found in the BORCE Draft Management Plan (TDEC 2004). The remaining portion of Parcel ED-6 would be transferred to the city of Oak Ridge. This alternative would also require the construction of a new boundary patrol road similar to one described under the proposed action.

3.0 AFFECTED ENVIRONMENT

3.1 LAND AND FACILITY USE

Parcel ED-6 consists of approximately 362 acres located on the eastern end of ORR. The parcel is also located within the city limits of Oak Ridge and is currently zoned as Federal Industry and Research (FIR). The majority of the parcel is undeveloped and serves multiple uses that include utility easement, limited security and facility buffer, wildlife management, forestry, and environmental monitoring.

The property is also part of the National Environmental Research Park (NERP). NERP serves as an outdoor laboratory for studying the nature of present and future environmental consequences from energy-related issues such as global and regional change, environmental stresses, and resource use. Active research within the boundary of Parcel ED-6 includes a soil sampling site for ecosystem and landscape scale studies. The parcel is also located within the Poplar Creek Road Unit of the Oak Ridge WMA, which is managed by the Tennessee Wildlife Resources Agency (TWRA). Deer and turkey hunts are conducted in the area at various times during the year. However, archery hunters may not hunt within 100 yards of residential areas, and gun hunters may not hunt within 400 yards of residential areas.

Development on the property includes a TVA power line and ROW, three roads (Wisconsin Avenue, North Boundary Patrol Road, and East Quarry Road), a water pump station, and a water tank. The North Boundary Patrol Road also serves as the North Boundary Greenway Trail through a license DOE granted to the city of Oak Ridge in 1999. Wisconsin Avenue is maintained by the city and provides access to the residential development located along Whippoorwill Drive.

Land uses immediately adjacent to Parcel ED-6 are varied. Residential developments are located to the north and east of the parcel. The area to the west of the parcel is part of the ORR land included in the BORCE. Although not immediately adjacent to Parcel ED-6, the Horizon Center Industrial Park is also located west of the parcel. The Oak Ridge Turnpike (SR 95) runs along the southern portion of the parcel. Land use further south of the highway is primarily agricultural land and some limited residential development.

3.2 AIR QUALITY

The state of Tennessee has adopted the National Ambient Air Quality Standards (NAAQS) set by the U. S. Environmental Protection Agency (EPA) for six principal pollutants considered harmful to public health and the environment. These pollutants include particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}) and 2.5 microns ($PM_{2.5}$) in diameter, sulfur dioxide (SO_2), carbon monoxide (CO), nitrogen dioxide (NO_2), lead (Pb), and ozone (O_3). Based on the ambient (outdoor) levels of the criteria pollutants, EPA evaluates individual Air Quality Control Regions to establish whether or not they meet NAAQS. Areas that meet NAAQS are classified as attainment areas; areas that exceed NAAQS for a particular pollutant(s) are classified as non-attainment areas for the pollutant(s).

Air quality surrounding the Oak Ridge area is relatively good. However, Anderson County has been designated as a non-attainment area for the 8-hour O_3 standard, as part of the larger Knoxville non-attainment area. Also, Anderson County and a portion of Roane County have been designated as non-attainment for the new, stricter federal fine particulate matter ($PM_{2.5}$) air quality standard. For all other criteria pollutants for which EPA has made attainment designations, existing air quality in the greater Knoxville and Oak Ridge areas is in attainment with NAAQS.

3.3 GEOLOGY AND SOILS

3.3.1 Site Geology

Oak Ridge lies within the Valley and Ridge Physiographic Province of the Southern Appalachian Mountains. The Valley and Ridge Province in Tennessee consists of Cambrian- to Ordovician-age sedimentary rocks that occur as northeast-southwest-trending thrust sheets formed during the Late Paleozoic Appalachian mountain-building episode, which has created the pattern of parallel valleys and ridges characteristic of the region. Erosion-resistant sandstones, siltstones, dolomites, and cherty formation help form the higher ridges while less-resistant limestones and shales underlie the valleys. Karst processes that form sinkholes and cavern systems have created extensive underground drainage networks in the more soluble carbonate-rich rocks.

Discussions of the regional geology and structural and stratigraphic relationships on ORR can be found in the *Status Report on the Geology of the Oak Ridge Reservation* (Hatcher et al. 1992), and detailed discussions of the geology and geologic structure of the area immediately west of Parcel ED-6 can be found in Lemiszki (1994 and 1995). The geologic formations underlying Parcel ED-6 are indicated on [Fig. 3.1](#) and include those of the Knox Group and the lower portion of the Chickamauga Supergroup.

The Knox Group, which underlies the northern two-thirds of Parcel ED-6, consists of carbonates that have been divided into five formations based primarily on the characteristics of chert and sandstone blocks preserved in the residuum. The Knox Group includes, from oldest to youngest, the Copper Ridge Dolomite, the Chepultepec Dolomite, the Longview Dolomite, the Kingsport Formation, and the Mascot Dolomite. For the most part, these rocks range from massive- to medium-bedded, fine- to coarse-grained dolomite with some interbedded limestones, primarily in the Kingsport Formation, and sandstone lenses, all containing chert. These formations weather chiefly by solutional attack with irregular thicknesses of soil developed above them.

The Chickamauga Supergroup includes the Stones River Group of formations, which occupy the southern one-third of Parcel ED-6. The Stones River Group includes the Pond Spring Formation, the Murfreesboro Limestone, the Ridley Limestone, and the Lebanon Limestone. These formations range from massive-bedded limestones to thin, irregular-bedded calcareous shales colored from dark gray to maroon, green, and yellowish-red with some beds containing abundant fossils.

Monoclinal dipping beds with northeast strike and southeast dips characterize the bedrock underlying Parcel ED-6. The mean strike and dip for these formations along strike in the vicinity of the East Tennessee Technology Park (ETTP) west of the parcel, as determined by Lemiszki (1995), is N49°E/35°SE. Lemiszki (1995) notes that faults are rare to nonexistent and fractures are generally consistent, with two primary bedding plane normal sets, and as many as three additional fracture sets present locally in these same rocks in the vicinity of ETTP. The secondary fracture sets have orientations at 30 to 45° east and west of the primary sets, resulting in east-west and north-south fracture orientations. The primary structural feature in the vicinity of Parcel ED-6 is the East Fork syncline (bowl-shaped fold), which lies to the south. This feature was developed on the footwall of the Whiteoak Mountain fault and preserves younger rocks in the center of this feature. The leading edge of the Whiteoak Mountain fault lies approximately 5500 ft south of the parcel. A part of the Whiteoak Mountain fault, known as the K-25 fault, has been mapped to within approximately 4500 ft of the southwestern corner of Parcel ED-6 where it appears to terminate within the rocks of the north limb of the East Fork syncline. Karst development is common in the carbonate rocks of the Knox Group throughout ORR. Lithologic and bedding variations in the Chickamauga Supergroup result in less dramatic karst development in these rocks, but it still occurs. Sinkholes and related surface depressions in the vicinity of Parcel ED-6 indicate

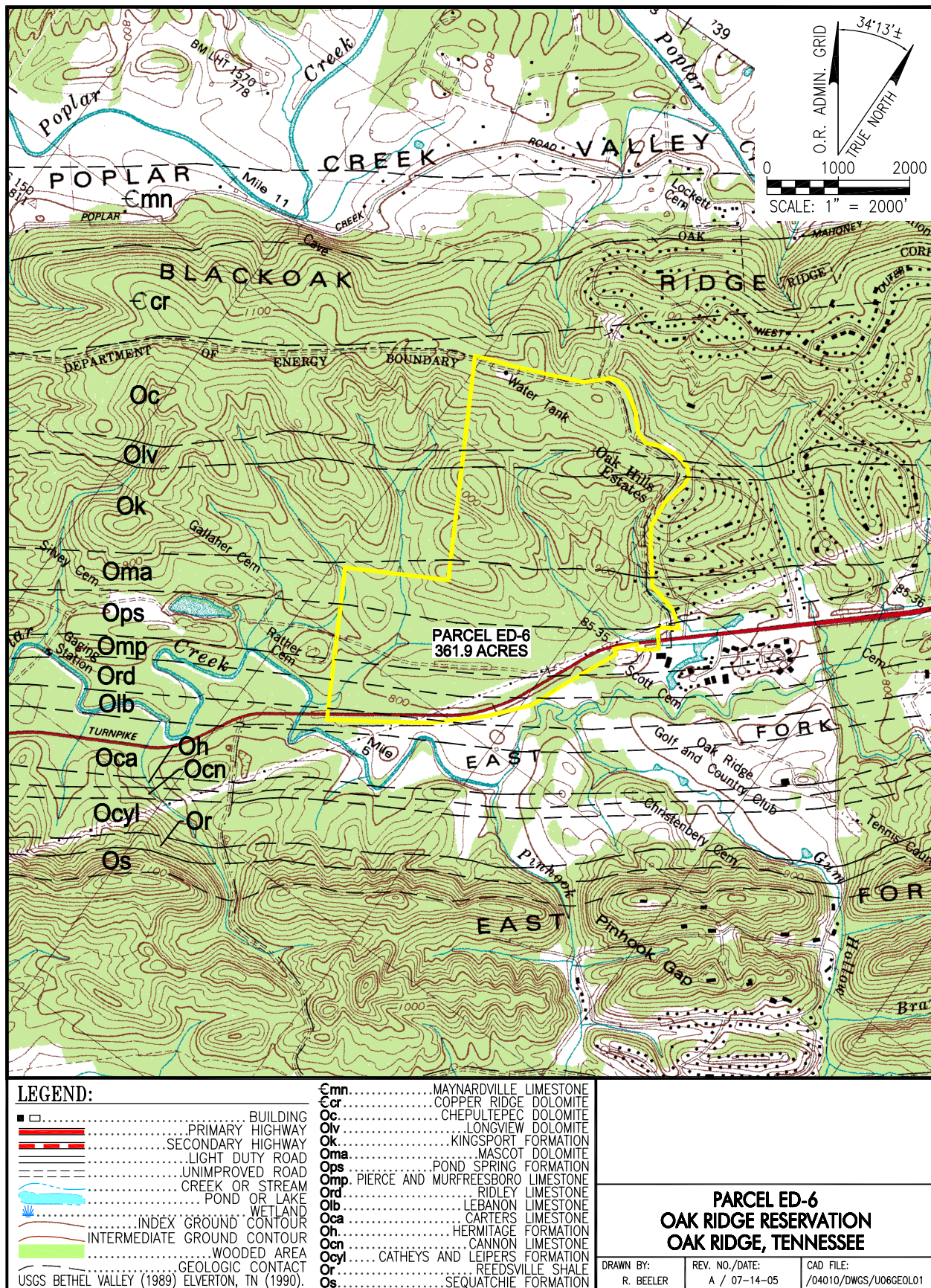


Fig. 3.1. Geologic Map of Parcel ED-6

that karst development is present. A cave exists at the base of the north slope of Blackoak Ridge approximately 3000 ft northwest of the parcel. A relatively large sinkhole located approximately 1200 ft southwest is indicated on the U. S. Geological Survey topographic map. This sinkhole has developed within rocks of the Chickamauga Supergroup.

3.3.2 Soils

Soils underlying Parcel ED-6 can be generally characterized as well-drained residuum and colluvium derived from Knox Group dolostones and Chickamauga Supergroup limestones and shales. Depth to bedrock is typically 50 ft or more over the Knox Group with bedrock generally being shallower over the Chickamauga Supergroup rocks. The soils in the area have been mapped as primarily consisting of Fullerton cherty silt loam and Clarksville cherty silt loam with smaller areas of Dewey silty clay loam, Talbott silty clay loam, Colbert silty clay loam, and Roane gravelly loam (USDA 1942). Soils of the Fullerton and Clarksville series occupy the majority of the site and are found on the steep, hilly, and rolling portions of the parcel, while soils of the other series primarily occupy the low areas near streams and East Fork Poplar Creek.

Soils of the Fullerton series are described as being well-drained, strongly acid, moderately cherty, and moderately productive soils originating from the weathering of moderately cherty dolomitic limestone. In uneroded areas, Fullerton cherty silt loam has a brownish-gray loose silt loam surface soil about 10 to 15 in. thick. This layer normally contains a moderate quantity of chert fragments. Underlying the surface soil is the yellowish-red or pale-red silty clay or silty clay loam subsoil, about 25 to 35 in. thick. This subsoil also contains a moderate quantity of chert fragments. Underlying the subsoil is the substratum consisting of reddish-yellow silty clay splotched with yellow, red, brown, and gray. This material is generally tight, sticky, and plastic and contains a moderate quantity of chert fragments. The substratum continues to bedrock, which lies from 20 to 30 ft below the surface in most places (USDA 1942). The eroded phase of the Fullerton, which has also been mapped in the Parcel ED-6 area, is similar to the above with the exception that most or all of the surface soil is missing from this phase. Like the Fullerton soils, the Clarksville soils are developed from the residuum of cherty dolomitic limestone. These soils have similar characteristics; however, the Clarksville soils contain more chert and have lighter colored surface soils and yellow rather than yellowish-red subsoils.

3.4 WATER RESOURCES

3.4.1 Groundwater

The principal aquifers in the Oak Ridge area include two general hydrologic units, the Knox Aquifer and the ORR Aquitards. The Knox Aquifer includes the Knox Group, which underlies the northern two-thirds of Parcel ED-6, and the Maynardville Limestone of the Conasauga Group. Flow in the Knox Aquifer is primarily through solution cavities and enlarged fractures. The ORR Aquitards are associated with the remaining geologic units in the area, including the Chickamauga Supergroup that underlies the southern third of Parcel ED-6. Hydraulic conductivity and potential yield in the ORR Aquitards are generally low and highly variable, depending on the density, width, and interconnectedness of local bedrock fractures and solution cavities. Shallow groundwater is expected to follow topography and discharge to the south into East Fork Poplar Creek. Groundwater flow in bedrock likely follows solution-enlarged features, such as bedding planes and fractures, with movement both along geologic strike and dip of the bedrock formations.

3.4.1.1 Groundwater use

Groundwater is not used for agricultural, drinking, or industrial purposes in Oak Ridge. All water users in the area obtain water directly from the Oak Ridge municipal water system. There are no groundwater wells that extract water for drinking water purposes within a 2-mile radius of Parcel ED-6.

3.4.2 Surface Water

Surface water features on Parcel ED-6 are limited. Storm water runoff from the parcel either infiltrates into the ground or drains to one of four wet-weather conveyances, which eventually discharge into East Fork Poplar Creek.

3.5 FLOODPLAINS AND WETLANDS

Floodplains consist of mostly level land along rivers and streams that may occasionally be submerged by floodwaters. Parcel ED-6 is located outside of the East Fork Poplar Creek floodplain and the published Oak Ridge flood hazard zone boundaries. A walkover survey of Parcel ED-6, conducted by wetland scientists in October 2004, did not identify the presence of any wetlands on the property.

3.6 ECOLOGICAL RESOURCES

3.6.1 Terrestrial Habitat

The Oak Ridge area provides a variety of habitat types that support a large number of plant and animal species. Vegetation on Parcel ED-6 includes mixed hardwood, mixed hardwood/pine, mixed hardwood/cedar, pine, kudzu, prairie, and maintained lawn habitats (Fig. 3.2).

Mixed hardwoods encompass about 88 acres and occur on the steeply sloping eastern and western portions of the parcel. This community is characterized by dominant mature trees consisting of white oak (*Quercus alba*), black oak (*Quercus velutina*), southern red oak (*Quercus falcate*), mockernut hickory (*Carya tormentosa*), yellow-poplar (*Liriodendron tulipifera*), sugar maple (*Acer saccharum*), and red maple (*Acer rubrum*), along with a variety of other trees and shrubs.

The mixed hardwood/pine habitat type includes approximately 110 acres and also occurs on the steeper slopes within the center and eastern portions of the site. Dominant species of this plant community include a variety of mature oaks, hickories, and miscellaneous other hardwood species in association with shortleaf pine (*Pinus echinata*), Virginia pine (*Pinus virginiana*), and eastern white pine (*Pinus strobe*). This habitat type also includes areas of mixed-aged (mature and immature) scrub hardwood stands that have developed where the mature pines were impacted by the Southern pine beetle.

Mixed hardwood/cedar habitat occurs on approximately 97 acres and occupies most of the south side of the parcel on gently sloping to nearly level land of lower elevations. Dominant species of this plant community include mature chinquapin oak (*Quercus muehlenbergii*), black walnut (*Juglans nigra*), American elm (*Ulmus Americana*), slippery elm (*Ulmus rubra*), boxelder (*Acer negundo*), green ash (*Fraxinus pennsylvatica*), and eastern redcedar (*Juniperus virginiana*).

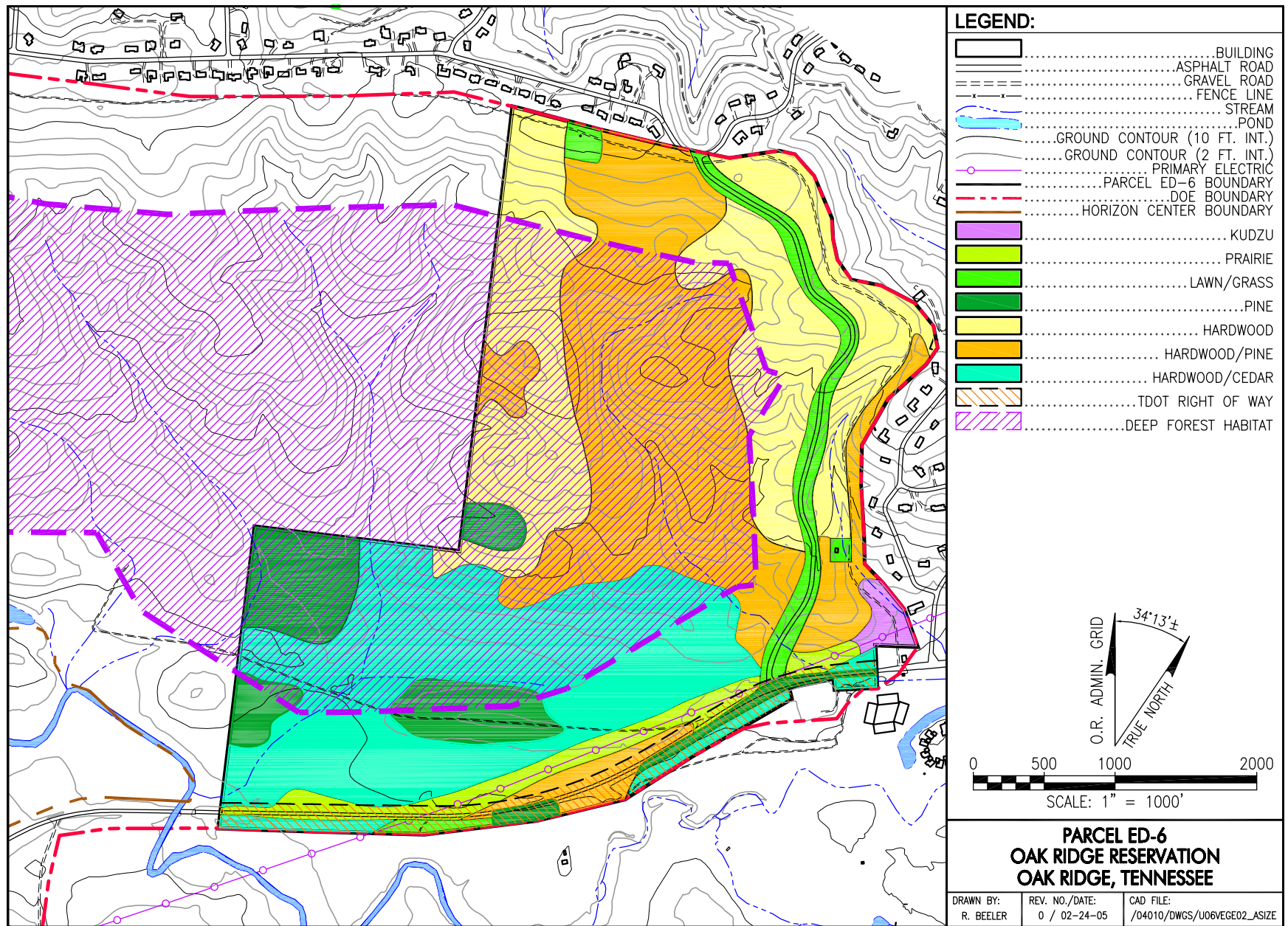


Fig. 3.2. Parcel ED-6 vegetation.

The loblolly pine (*Pinus taeda*) habitat type totals some 34 acres and is found in scattered areas throughout the site. In most cases, this type includes relatively homogenous stands of loblolly pine of varying age. This habitat type occurs in former mature pine plantations that were impacted by the Southern pine beetle infestation in the 1990s, which have since regenerated back to pine via natural recruitment. In most cases, these are immature stands (10 to 15 years), but there are pockets of older trees that were not affected by the pine beetle.

A fairly large (approximately 3 acres) patch of kudzu vine (*Pueraria montana*) has developed in the southeast corner of the parcel in the TVA ROW and along the North Boundary Road Greenway. Additionally, there are a number of other exotic, invasive plants on the property. These plants occur throughout the parcel in all habitat types. Some of the primary species observed include autumn-olive (*Elaeagnus umbellata*), Chinese privet (*Ligustrum sinense*), English privet (*Ligustrum vulgare*), Japanese honeysuckle (*Lonicera japonica*), bush honeysuckle (*Lonicera maacaii*), and Nepal grass. In addition, several mimosa trees (*Albizia julibrissin*) are present along the gravel access road on the south side of the property.

The prairie community type totals around 14 acres and is present within and adjacent to the TVA power line ROW that crosses the southern portion of the site. This habitat is typically maintained by prescribed burning, but has developed in the TVA ROW because of periodical clearing to eliminate woody vegetation. Dominant species include big bluestem grass (*Andropogon gerardii*), broomsedge grass (*Andropogon virginicus*), and various other native warm-season grasses, along with scrubby immature hardwoods and shrubs (blackberries and sumac).

Maintained lawn occurs in areas that are frequently mowed. Dominant plants include Kentucky-31 fescue and various other lawn grasses, as well as herbaceous plants. This manmade landscape feature is present near the water tower on the ridge top, the utility building on the east side, and along the roadside ROWs. This type of habitat, along with the roads on the parcel, is assumed to be approximately 16 acres to make a total of 362 acres.

As part of the ORR Land Use Planning process, analysis was performed to determine the impacts of the land use scenarios that would result in forest fragmentation and loss of deep forest habitat. Deep forest habitat was defined as forested area that possesses more than 70% canopy cover. For analysis purposes, the minimum acreage required by deep forest wildlife was defined as 50 contiguous acres (ORNL 2002). About 174 acres of Parcel ED-6 are part of a larger contiguous area (approximately 863 acres) of deep forest habitat, which is part of the BORCE.

3.6.2 Terrestrial Animals

A terrestrial animal survey has not been conducted for Parcel ED-6. However, the available habitat on the parcel surely supports a moderately diverse group of animals. Wildlife species that would be expected to occur include those species typically found in urban settings (due to the close proximity of residential developments) and species that typically occur on ORR in less developed areas.

Species typically found in urban settings include mammals such as the gray squirrel (*Sciurus carolinensis*), chipmunk (*Tamias striatus*), cottontail rabbit (*Sylvilagus floridanus*), striped skunk (*Mephitis mephitis*), groundhog (*Marmota monax*), and gray fox (*Urocyon cinereoargenteus*). Animals that may inhabit other portions of Parcel ED-6 include small mammals such as the white-footed mouse (*Peromyscus leucopus*), golden mouse (*Ochrotomys nuttalli*), and short-tail shrew (*Blarina brevicauda*), as well as the red fox (*Vulpes vulpes*), coyote (*Canis latrans*), white-tailed deer (*Odocoileus virginianus*), cotton rat (*Sigmodon hispidus*), and eastern harvest mouse (*Reithrodontomys humulis*).

Nearly 200 species of birds have been documented on ORR, and the area plays an important role in nesting and migration of songbirds. Surveys of songbird populations on the Oak Ridge WMA began in 1993 and are conducted as part of the Partners in Flight (PIF) program. The PIF program was established in 1990 to establish an international framework to conserve and manage bird populations, particularly Neotropical migrants—birds that nest in North America and spend their winter months in the New World tropics, south of the United States.

PIF monitoring indicates that 23 of the top 27 priority species for conservation in this region are present on ORR during the breeding season and many of these species are common or abundant. The wood thrush (*Hylocichla mustelina*), a species very high on the list of concern, is the second most abundant forest-breeding bird found on the Reservation. Other forest birds with conservation priority that nest on ORR include the worm-eating warbler (*Helminthophila vermivorus*), Kentucky warbler (*Oporornis formosus*), chuck-will's-widow (*Caprimulgus carolinensis*), eastern wood-pewee (*Contopus virens*), yellow-throated warbler (*Dendroica dominica*), prothonotary warbler (*Protonotaria citrea*), brown-headed nuthatch (*Sitta pusilla*), yellow-throated vireo (*Vireo flavifrons*), yellow-billed cuckoo (*Coccyzus americanus*), and summer tanager (*Piranga olivacea*).

Birds commonly found in urban areas of Oak Ridge, including Parcel ED-6, are the northern cardinal (*Cardinalis cardinalis*), robin (*Turdus migratorius*), eastern bluebird (*Sialia sialis*), tufted titmouse (*Baeolophus bicolor*), black-capped-chickadee (*Poecile carolinensis*), song sparrow (*Melospiza melodia*), northern mockingbird (*Mimus polyglottos*), common grackle (*Quiscalus quiscula*), starling (*Sturnus vulgaris*), American crow (*Corvus brachyrhynchos*), house finch (*Carpodacus mexicanus*), house sparrow (*Passer domesticus*), rock dove (*Columba livia*), mourning dove (*Zenaidura macroura*), northern flicker (*Colaptes auratus*), red-bellied woodpecker (*Melanerpes carolinus*), downy woodpecker (*Picoides pubescens*), blue jay (*Cyanocitta cristata*), and eastern towhee (*Pipilo erythrophthalmus*).

Other species of birds that would likely be found at Parcel ED-6 are the Kentucky warbler, ovenbird (*Seiurus aurocapillus*), brown thrasher (*Toxostoma rufum*), wood thrush, rufous-sided towhee (*Pipilo erythrophthalmus*), Carolina wren (*Thryothorus ludovicianus*), eastern meadowlark (*Sturnella magna*), indigo bunting (*Passerina cyanea*), turkey (*Meleagris gallopavo*), and quail (*Colinus virginianus*). Birds of prey that may nest or hunt on or near the parcel are the red-tailed hawk (*Buteo jamaicensis*), broad-winged hawk (*Buteo platypterus*), great horned owl (*Bubo virginianus*), screech owl (*Otus asio*), barred owl (*Strix varia*), and Cooper's hawk (*Accipiter cooperii*).

Reptiles and amphibians that may inhabit Parcel ED-6 include the upland chorus frog (*Pseudacris triseriata*), tree frog (*Hyla versicolor*), spring peeper (*Hyla crucifer*), green frog (*Rana clamitans*), toad (*Bufo* spp.), various salamanders (*Eurycea* spp. and *Desmognathus* spp.), eastern box turtle (*Terrapene carolina*), northern copperhead (*Agkistrodon contortrix*), black rat snake (*Elaphe obsoleta*), and fence lizard (*Sceloporus undulatus*).

3.6.3 Threatened and Endangered Species

DOE contacted the FWS to inform them about the proposed action and to obtain the latest information on federally listed threatened and endangered (T&E) species in the area of Parcel ED-6. Information received from the FWS is summarized below and included in [Appendix B](#).

According to the information provided by the FWS, the gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*), both federally listed endangered species, may occur on or near Parcel ED-6. The FWS also recommended that a biological assessment be conducted to assess potential impacts and determine if the proposed action may affect the two bat species.

DOE recently completed a mist net survey and habitat assessment at Parcel ED-6 to determine the presence or probable absence of the gray bat and Indiana bat. Although several big brown bats (*Eptesicus fuscus*), eastern pipistrelle (*Pipistrellus subflavus*), and eastern red bats (*Lasiurus borealis*) were captured, no Indiana or gray bats were found.

3.7 CULTURAL RESOURCES

Cultural resources are defined as any prehistoric or historic district, site, building, structure, or object considered important to a culture, subculture, or community for scientific, traditional, religious, or any other reason. When these resources meet any one of the National Register Criteria for Evaluation (36 *CFR* Part 60.4), they may be termed historic properties and, thereby, are potentially eligible for inclusion on the National Register of Historic Places (NRHP).

Based on previous surveys (DuVall and Souza 1996), it was thought that Parcel ED-6 did not contain any intact cultural resources. However, since the area contains previously recorded and inventoried pre-World War II structures, DOE conducted an additional archaeological survey of the area (DuVall 2005). The survey consisted of background historical, archaeological research, and intensive pedestrian inspection of the parcel, including systematic shovel testing in areas of high resource probability.

Prehistoric activity was limited to two previously identified sites (40RE134 and 40RE228) located within or near the southern portion of Parcel ED-6. These sites could not be relocated during the survey, and no additional prehistoric sites were identified. Both sites were reported to have prehistoric and historic artifact scatters of a very disturbed nature.

Historic resources identified within Parcel ED-6 include the remains of five previously identified pre-World War II structures. The remains of these structures were located in the vicinity of the old Gallaher Ferry Road (i.e., East Quarry Road). Surface remains include chimney falls, foundation remains, and other historic debris. The sites date no earlier than the late 19th century and were probably razed around 1942 when the government was acquiring the land as part of the Manhattan Project. All of the sites were in very poor condition and evidence of disturbance was well documented. Shovel testing in the site areas produced few artifacts associated with the 20th century occupation of the structures. The sites have limited potential for archaeological interpretation and would not be considered eligible for NRHP listing.

Based on the survey findings and research at the Tennessee Division of Archaeology and the Tennessee Historical Commission, DOE has determined that the proposed action would have no impact on any site or property eligible for or included in the NRHP pursuant to 36 *CFR* 60.4, and no further archaeological investigations are recommended.

3.8 SOCIOECONOMICS

The region of influence (ROI) for the purpose of this analysis includes Anderson and Roane counties in Tennessee. Parcel ED-6 is located within the Roane County portion of Oak Ridge, and the impact of residential development will primarily affect the city, which includes portions of both counties. Although business and industrial development affects a four-county or wider area, the impacts of residential development are likely to be limited to the immediate Oak Ridge area.

3.8.1 Demographic and Economic Characteristics

Table 3.1 summarizes population, per capita income, and wage and salary employment information from 1999 to 2003 for Anderson and Roane Counties. The total population of the ROI was 124,527 in 2002. Anderson County accounted for over half of the regional population (58%), while Roane County accounted for 42%. Between 1999 and 2003, the regional population remained relatively stable, growing only slightly from 123,190 to 124,527 (BEA 2004 and 2005). As of 2000, the population of the city of Oak Ridge included 27,387 individuals, or approximately 22% of the regional total (Census 2000).

Table 3.1. Demographic and economic characteristics in the ED-6 region of influence

County	1999	2000	2001	2002	2003	Annual growth 1999 to 2003 (%)
<i>Anderson</i>						
Population	71,454	71,285	71,451	71,691	71,970	0.18
Per capita income (\$)	24,001	25,038	25,921	26,899	27,668	3.62
Total employment	50,387	50,961	51,030	52,611	52,839	1.19
<i>Roane</i>						
Population	51,736	51,944	51,958	52,536	52,557	0.39
Per capita income (\$)	21,091	22,343	22,714	24,308	25,332	3.98
Total employment	24,610	23,798	22,077	21,072	20,981	-3.91
<i>Region totals</i>						
Population	123,190	123,229	123,409	123,936	124,527	0.27
Per capita income (\$)	22,778	23,907	24,569	25,804	26,677	4.03
Total employment	74,997	74,759	73,107	72,683	73,820	-0.39

Source: Bureau of Economic Analysis 2004 and 2005.

Employment for the region declined slightly over the same period, from 74,997 in 1999 to 73,820 in 2003. Roane County accounted for most of the decline, while employment grew slightly in Anderson County. The decline continues a downward trend in employment linked to major reductions in DOE-related employment during the last decade. While the decline has slowed considerably in recent years, ROI employment remains below its 1995 peak of 77,609. Per capita income for the region grew by about 4% per year, raising total personal income from \$2.8 billion to \$3.3 billion over the same period (BEA 2004 and 2005).

3.8.2 Distribution of Minority and Economically Disadvantaged Populations

For the purposes of this analysis, a minority population consists of any census tract in which minority representation is greater than the national average of 30.7%. Minorities include individuals classified by the U. S. Bureau of the Census as Black or African-American, American Indian and Alaska Native, Asian, Native Hawaiian and Other Pacific Islander, Hispanic or Latino, and Some Other Race. This provides a conservative estimate consistent with recent Office of Management and Budget guidance (OMB 2000). Hispanics may be of any race and are excluded from the totals for individual races to avoid double counting.

The distribution of minority and economically disadvantaged populations changed little between 1990 and 2000. Only one of the census tracts that immediately surrounds ORR currently includes a minority population. As of the 2000 census, minorities represented 40.1% of the population in tract 201. As in 1990, Black or African-American residents comprised the largest group (29.6%) of these minorities. The proportion of minority residents in all other Oak Ridge census tracts was below the national average, ranging from 17.4% in tract 205 to 8.8% in tract 206 (Census 2000). No federally recognized Native American groups live within 50 miles of the project area.

According to the 2000 Census, 12.4% of the U. S. population and 13.5% of the Tennessee population had incomes below the poverty level in 1999 (Census 2000). In this analysis, a low-income population consists of any census tract in which the proportion of individuals below the poverty level exceeds the national average. Within the ROI, 13.1% of the population in Anderson County had incomes below the poverty level in 1999. The proportion in Roane County was 13.9%. Within Oak Ridge, low-income populations were located in census tracts 201 (15.8% below poverty level) and 205 (27.9%). Tract 201 roughly corresponds to the Scarboro community, and tract 205 includes the area between Oak Ridge Turnpike and West Outer Drive, bounded on the west by Louisiana Avenue and on the east by Highland Avenue and Robertsville Road. In other Oak Ridge census tracts, the percentages ranged from 12.1% in tract 204 to 1.9% in tract 301 (Census 2000).

3.8.3 Housing

In Oak Ridge, there were 13,417 housing units in 2000, of which 12,062 (89.9%) were occupied and 1,355 (10.1%) were vacant. Of the occupied units, 68.4% were owner-occupied and 31.6% were renter-occupied (Census 2000). City-wide, the median asking price for Oak Ridge housing units in 2000 was \$98,200 for owner-occupied units, and \$80,700 for vacant units (Census 2000). Among renter-occupied units, the median rent was \$487/month for occupied units and \$389/month for vacant units (Census 2000).

3.8.4 Schools

The Oak Ridge school system includes eight schools, which served a total of 4,340 students in 2004. The city budget for 2005 includes \$11.2 million allocated for school operations. Linden Elementary School and Robertsville Middle School serve the area that includes Parcel ED-6. In 2004, there were 370 students enrolled in Linden, and 706 enrolled in Robertsville (Tennessee Department of Education 2004, City of Oak Ridge 2004). Oak Ridge has one high school.

3.8.5 Police and Fire Protection

The Police Department in Oak Ridge includes 58 uniformed officers and 12 non-uniform support personnel, with a 2005 budget allocation of \$4.4 million. The Oak Ridge Fire Department maintains three fire stations, staffed by 44 uniform personnel supplemented by fire specialists. The 2005 budget allocation for the fire department is \$3.5 million. The city has mutual-aid agreements with DOE and with most surrounding agencies (City of Oak Ridge 2004).

3.8.6 Fiscal Characteristics

Oak Ridge City general fund revenues and expenditures for fiscal year (FY) 2003 and budgeted revenues and expenditures for 2005 are presented in [Table 3.2](#). The general fund supports the ongoing operations of local governments, as well as community services, such as police protection and parks and recreation. The largest revenue sources have traditionally been local taxes (which include taxes on property, real estate, hotel/motel receipts, and sales) and intergovernmental transfers from the federal or state government. Local property taxes account for nearly half (46.8%) of the current general fund revenues (City of Oak Ridge 2004). For FY 2005, the property tax rate is \$2.87 per \$100 of assessed value. The assessment rate is 40% for industrial and commercial property and 25% for residential property (City of Oak Ridge 2004). The city also receives a payment-in-lieu-of-tax (PILT) for ORR acreage that falls within the city limits. For FY 2003, the payment was based on a value of \$5,327/acre, the farmland assessment rate of 25% (City of Oak Ridge 2004).

Table 3.2. City of Oak Ridge revenues and expenditures, FY 2003 and FY 2005 (\$)

	2003 Actual	2005 Budgeted
<i>Revenues</i>		
Taxes	19,776,290	20,160,482
Licenses and permits	197,357	220,000
Intergovernmental revenues ^a	10,614,207	10,637,995
Charges for services	1,393,281	1,397,437
Fines and forfeitures	331,069	339,000
Other revenues	437,019	442,500
Total revenues	32,749,223	33,197,414
<i>Expenditures and other financing</i>		
Expenditures	(14,599,296)	(14,831,115)
Other financing uses	(18,922,778)	(18,616,741)
Total expenditures and other financing	(33,522,074)	(33,447,856)

Source: City of Oak Ridge 2004.

^aIncludes payment-in-lieu-of-tax (PILT).

FY = fiscal year.

3.9 INFRASTRUCTURE

3.9.1 Transportation

Parcel ED-6 is well serviced by existing roads within the city of Oak Ridge. The main access to the parcel is from the Oak Ridge Turnpike (SR 95) on Wisconsin Avenue. The parcel can also be accessed adjacent to Wisconsin Avenue via the North Boundary Patrol Road, which is also the North Boundary Greenway. East Quarry Road, which is a gravel DOE-controlled access road, is located on the southern part of the property. The entrance to this road is off of the Oak Ridge Turnpike just west of Wisconsin Avenue.

3.9.2 Utilities

Major utilities from the city of Oak Ridge (e.g., electricity, water, and sewer) that currently serve the residential developments along Whippoorwill Drive and east of Wisconsin Avenue would also be available for Parcel ED-6. Natural gas is also available from the Oak Ridge Utility District.

3.10 NOISE

The primary source of background noise on Parcel ED-6 is associated with moving vehicles traveling on the Oak Ridge Turnpike and Wisconsin Avenue. The traffic generally results in fluctuating noise levels above ambient noise levels for a short period of time. A source of stationary noise is the residential development along the north boundary of the parcel. Sensitive noise sources near or on Parcel ED-6 include the North Boundary Greenway and the homes along Whippoorwill Drive.

4.0 ENVIRONMENTAL CONSEQUENCES

4.1 LAND USE

4.1.1 Proposed Action

Under the proposed action, the present land use of Parcel ED-6 would change over time as the residential development occurs. The visual character of the majority of the parcel would change from a more natural to a more man-made-looking environment as development progressed. Conveyance of the property and the subsequent residential development would also remove the area from NERP and the Oak Ridge WMA.

Development would be compatible with local zoning requirements and would be subject to all local, state, and federal environmental laws and regulations. Currently, Parcel ED-6 is zoned by the city of Oak Ridge as FIR. This classification was established for ORR and operations within its boundaries. Whenever ORR land is transferred from DOE to the city or a private owner for purposes not directly related to the mission of DOE, the City of Oak Ridge Regional Planning Commission will study and make recommendations to City Council concerning the appropriate zoning district designation. Upon receipt of such recommendation, the City Council will, after public hearings as required by law, adopt an ordinance establishing the zoning district classification as other than FIR. Under the proposed action, it is assumed that, after transfer, the appropriate zoning district designation for the parcel would be one of the single-family residential districts in the City of Oak Ridge Zoning Ordinance.

4.1.2 No Action

Under the no-action alternative, the existing land use at Parcel ED-6 would continue and the land would remain as DOE property until any future disposition could be decided (see Sect. 2.2).

4.1.3 Mixed Development Alternative

Land use impacts under this alternative would be similar to those described for the proposed action. Any commercial use of the parcel in addition to residential development would require the appropriate zoning designation by the city of Oak Ridge.

4.1.4 Conservation Easement Alternative

If Parcel ED-6 were included in the BORCE, land use would continue to be similar to existing conditions. Management of the area would be by TWRA in consultation with the Tennessee Department of Environment and Conservation, Division of Natural Heritage and would be consistent with the terms of an agreement between TWRA and DOE. The BORCE is subdivided into two units. The East Blackoak Ridge unit, which would include Parcel ED-6, would be managed both as a WMA and a proposed state natural area. The draft management plan for the area (TDEC 2004) states that permitted uses will include hiking and nature enjoyment. Conditional uses include hunting (in accordance with the Oak Ridge WMA agreement), pets (leashed pets may be permitted), motorized vehicles (in accordance with the Oak Ridge WMA agreement), and prescribed fires (allowed as per the agreement with DOE). Prohibited uses include horseback riding, camping, motorized and non-motorized off-road vehicle riding, rappelling, fires, collection, and consumption or possession of alcoholic beverages and controlled substances.

4.2 AIR QUALITY

4.2.1 Proposed Action

During preparation and construction, the use of heavy equipment would generate combustion engine exhaust containing air pollutants associated with diesel combustion (NO₂, CO₂, SO₂, PM₁₀, and volatile organic compounds). Similar air emissions would be generated from delivery vehicles bringing supplies and equipment to the construction site, and from construction workers commuting in their personal vehicles. Emissions from site preparation and construction would be short-term, sporadic, and localized (except for emissions associated with the personal vehicles of construction workers and vehicles transporting construction materials and equipment). Dispersion would decrease concentrations of pollutants in the ambient air as distance from the construction site increased. There would be a relatively limited amount of construction equipment and a small number of construction workers. The quantities of air pollutants produced by vehicles and equipment associated with construction would not be a substantial contribution to the total emissions from mobile sources already operating in the area, and would not be expected to adversely affect local air quality.

In addition, construction activities could generate an increase in fugitive dust (i.e., airborne particulate matter that escapes from a construction site) from earthmoving and other construction vehicle movement. Not all of the area available for construction would be under construction at any one time. Rather, earthwork would likely be undertaken in increments, with the first phase being excavated for utility installation, road construction and upgrading, and grading/contouring. Increases in fugitive dust would probably be noticeable at each site and in the immediate vicinity, and ambient concentrations of particulate matter could rise in the short-term. However, control measures for lowering fugitive dust emissions (i.e., covers and water or chemical dust suppressants) would minimize these emissions.

4.2.2 No Action

Under the no-action alternative, air pollutants would continue to be emitted at current rates in the vicinity of each parcel, with the largest source being vehicle traffic. Vehicle emissions at the baseline level would continue to be a source of O₃ in the surrounding area.

4.2.3 Mixed Development Alternative

Construction-related air emissions under this alternative would essentially be identical to those described for the proposed action and the addition of limited commercial facilities to the development of Parcel ED-6 would still not be expected to adversely affect local air quality.

4.2.4 Conservation Easement Alternative

Since no additional development would take place under this alternative, there would be no affect on local air quality.

4.3 GEOLOGY AND SOILS

4.3.1 Proposed Action

Site clearing, grading, and contouring would alter the topography of Parcel ED-6 in the areas that would be developed under the proposed action, but the geologic formations underlying those sites should

not be affected by proposed residential development. Construction would disturb soils, and some topsoil might be removed in the process.

Normally, a Farmland Conversion Impact Rating would be completed to rate the relative impact of the proposed action. The rating form is based on a Land Evaluation and Site Assessment (LESA) system, which measures the quality of farmland based on soil quality and other factors that would affect a farm's viability. No LESA was completed for the proposed action because the definition of prime farmland specifically excludes from consideration lands committed to urban development. Since Parcel ED-6 is within the city of Oak Ridge and has been zoned to include nonagricultural uses (i.e., industrial and research), the parcel is exempt from consideration as prime farmland.

4.3.2 No Action

No impact to the local geology and soils of Parcel ED-6 would occur under the no-action alternative because no development would take place.

4.3.3 Mixed Development Alternative

Potential geology and soils impacts under this alternative would be similar to those described for the proposed action.

4.3.4 Conservation Easement Alternative

Since no additional development would occur if Parcel ED-6 were added to the proposed BORCE, there would be no impact to the local geology and soils.

4.4 WATER RESOURCES

4.4.1 Proposed Action

The greatest potential impact to surface waters would originate during development from soil erosion, runoff, and sedimentation. Changes in surface topography during construction could alter the local hydrology, and covering large areas for roads and houses would reduce water infiltration, which could potentially affect off-site surface water features. Impacts could also occur from a fuel or hazardous material spill. Surface water runoff from the parcel eventually enters East Fork Poplar Creek through one of the wet-weather conveyances on the property. Construction activities that could indirectly impact East Fork Poplar Creek may require that the appropriate permits be obtained prior to any disturbance. Uncontrolled soil erosion could increase sedimentation and turbidity in the receiving surface waters. Soil erosion impacts would be mitigated through the use of best management practices and appropriate sedimentation and erosion control measures.

Spills of fuel and/or hazardous material could have adverse impacts on surface waters if not controlled or contained. Impacts would primarily be a change to the water quality (e.g., pH, dissolved oxygen, and conductivity) that could affect vegetation and aquatic biota. The potential for spills would be mitigated through the adherence to proper safety procedures and spill prevention plans. In the event of a spill from an accident, spill response measures (e.g., sorbents, neutralizers, secondary containment, and mechanical removal equipment) would minimize potential adverse impacts.

Impacts to groundwater quality could also occur as a result of a fuel or hazardous material spill and subsequent migration of contaminants through the soil profile to the groundwater table. However, it is

expected that the quantities of materials with the potential to affect surface or groundwater (e.g., fuel) would be transported or stored at the construction sites in the proper containers and according to all applicable regulations. The use of local, state, or federal permits, safety procedures, spill prevention plans, and spill response plans in accordance with state and federal laws would minimize the severity of potential impacts from accidents. Although there are few groundwater users in Oak Ridge, institutional controls (i.e., deed restrictions) would be in place to ensure that there would be no use of groundwater resources.

4.4.2 No Action

Under the no-action alternative there would be no impacts to surface water or groundwater resources.

4.4.3 Mixed Development Alternative

Impacts would be similar to those described under the proposed action.

4.4.4 Conservation Easement Alternative

This alternative would have a positive impact on surface water and groundwater resources in the vicinity of Parcel ED-6 since no development would occur.

4.5 FLOODPLAINS AND WETLANDS

4.5.1 Proposed Action

Parcel ED-6 is not located within any floodplain and no wetlands have been identified on the property.

4.5.2 No Action

No impacts to floodplains or wetlands would occur.

4.5.3 Mixed Development Alternative

No impacts would occur.

4.5.4 Conservation Easement Alternative

This alternative would not impact any floodplain or wetland since none are present at Parcel ED-6.

4.6 ECOLOGICAL RESOURCES

4.6.1 Proposed Action

Development on Parcel ED-6 would have direct impacts on terrestrial plants and animals. Because surface water features on the parcel are limited to wet-weather conveyances, direct adverse impacts to aquatic resources would be unlikely. Portions of the mixed hardwood, mixed hardwood/pine, mixed hardwood/cedar, pine, and prairie habitats present on the parcel would be impacted.

The impact of construction would include direct mortality or injury to biota and elimination or degradation of the impacted habitat. The most likely impact would be the elimination of one or more fragmented terrestrial areas or narrowing of areas already impacted on the parcel. The elimination or narrowing of terrestrial communities would have minimal impact since the majority of the species that occur on the parcel are common in the Oak Ridge area, and many of the animal species could relocate to similar habitats located immediately adjacent to the parcel. Minimizing the amount of earthmoving activities would reduce the effects on plants and terrestrial habitats, and blending construction with the natural setting of the area would result in fewer impacts and mitigation measures.

Development of Parcel ED-6 could result in potential elimination of up to 174 acres of deep forest habitat (see Sect. 3.6.1). Elimination of this habitat could have an adverse impact on neo-tropical migratory birds that use the area for both breeding and migration. Not only does forest clearing remove usable habitat, the removal of trees results in additional breaks in the forest canopy and increases the amount of edge habitat. Increased edge means that predators, such as cats, snakes, and raccoons, that would not usually find bird nests within the deep forest can now gain access to nests and either eat the eggs or young birds. Parasitism of nests also increases with the increase of edge for the same reason. For example, the brown-headed cowbird is notorious as a brood parasite. This means that it never builds a nest but, instead, lays its eggs in the nests of other species of birds.

Avoiding the resource, minimizing the impact, or mitigating the impact if avoidance or minimization is not possible would address impacts to ecological resources. Natural habitat around areas of development should be left as a buffer zone between the developed areas and other undeveloped portions of the site. Areas disturbed during development, but not used for housing, should be revegetated after construction is completed. The use of native species for revegetation would have a positive impact as it could enhance biotic and ecosystem diversity in the area.

Storm detention basins used to capture and treat storm water runoff would be designed and constructed to handle the additional runoff associated with any new developments to minimize impacts to the drainage system and, potentially, East Fork Poplar Creek. Storm water runoff would be discharged to surface water only in accordance with limitations established under state or other regulatory permits.

Conveyance of Parcel ED-6 would remove the area from the Oak Ridge WMA, and hunting would no longer occur on and in the immediate vicinity of the property. However, the removal of this property from the WMA would not adversely affect the management and control of the ORR deer population. In 2004, no deer were killed within Parcel ED-6, and only three deer were taken from the area located immediately to the west. Since 1985, only 138 deer out of a total of 8865, or approximately 1.6%, have been killed in the general vicinity of Parcel ED-6.

No federal- or state-listed T&E plants or animals are known to exist at Parcel ED-6. However, FWS indicated (see [Appendix B](#)) that the federally listed endangered gray bat and Indiana bat may occur on, or near, the Parcel ED-6 property. DOE is completing a biological assessment to assess potential impacts and to determine if the proposed action may affect these species. No Indiana or gray bats were captured during the recently completed mist net survey on the parcel (see Sect. 3.6.3). The results of the survey and habitat assessment will be included in the biological assessment and submitted to FWS. The results of the survey will also be included in the Final EA.

4.6.2 No Action

No additional impacts to terrestrial or aquatic habitats, plants, and animals would occur under the no-action alternative. Parcel ED-6 would remain DOE property and the current land use would remain unchanged until any future disposition could be decided (see Sect. 2.2).

4.6.3 Mixed Development Alternative

Under the mixed development alternative, potential impacts to ecological resources on and adjacent to Parcel ED-6 would be similar to those described for the proposed action.

4.6.4 Conservation Easement Alternative

The conservation easement alternative would have a positive impact on the ecological resources of Parcel ED-6 since the property would be protected from development.

4.7 CULTURAL RESOURCES

4.7.1 Proposed Action

Based on the results of a Phase I archaeological survey performed on Parcel ED-6, DOE determined that no archaeological resources would be affected by the proposed action. It was also determined that none of the historical resources present on the parcel would be eligible for listing in the NRHP pursuant to 36 *CFR* 60.4. The Tennessee State Historic Preservation Officer (TN-SHPO) reviewed the archaeological survey report and concurred with DOE that no archaeological resources eligible for listing in the NRHP are located within the project area ([Appendix B](#)).

4.7.2 No Action

There would be no impacts on cultural resources under the no-action alternative.

4.7.3 Mixed Development Alternative

Impacts under this alternative would be the same as those described under the proposed action.

4.7.4 Conservation Easement Alternative

Although Parcel ED-6 does not contain any sites or properties on or eligible for listing in the NRHP, this alternative would serve to protect the remains of existing sites from any additional disturbance due to development activities.

4.8 SOCIOECONOMICS

4.8.1 Proposed Action

This section assesses the potential socioeconomic impacts of the Parcel ED-6 conveyance and residential development. Residential development is expected primarily to affect local tax revenues through increases in property values and the shift from government to private ownership. This analysis assumes that there would be no commercial or retail development on Parcel ED-6, and that residential development would have no direct impact on employment.

Socioeconomic impacts are not only important in themselves, but also for the secondary environmental or distributional effects they may have. For example, economic growth can sometimes attract enough new people to an area that it places pressure on housing, schools, water supply, and other infrastructure. Environmental effects of any new construction, facility improvements required, or infrastructure overloads that result from such a population increase should also be evaluated as induced

effects of the development. For this reason, the analysis below uses bounding assumptions to identify the range of potential impacts. The purpose here is not to forecast economic activity but to make sure that reasonably foreseeable indirect effects are appropriately identified and considered.

4.8.1.1 Demographics

Population. This analysis assumes that once Parcel ED-6 is developed, population density would be similar to the population density in other portions of the city. According to Census data for 2000, population density in portions of Oak Ridge ranged from 67.3 to 555.7 persons per square mile, or 0.105 to 0.868 persons per acre (Census 2000). Under this assumption, development would result in a maximum of 314 new city residents, which represents less than a 1% increase in population for the ROI, or a 1% increase in population for the city of Oak Ridge. Any increase in the Oak Ridge population may also represent a shift in relative population share from other parts of the region into Oak Ridge, rather than a net gain for the region.

Environmental Justice. Executive Order 12898, “Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations,” requires agencies to identify and address disproportionately high and adverse human health or environmental effects its activities may have on minority and low-income populations. Current assumptions suggest there would be no high and adverse human health or environmental impacts, and residential development does not normally result in such adverse impacts. Therefore, the proposed action is not expected to have a disproportionate adverse effect on low-income and minority populations.

4.8.1.2 Employment and income

As discussed earlier, this analysis assumes that developing Parcel ED-6 would create no direct, full-time-equivalent jobs. Therefore, no direct impacts on ROI employment or income are anticipated.

4.8.1.3 Schools

The proposed action is likely to have limited impact on the local schools, but the actual impact would depend on the housing density of the final development and the age distribution of the new residents. The lower bound estimate in Sect. 4.8.1.5 would be similar to existing development to the north of Parcel ED-6 along Whippoorwill Drive. At the lower bound, the number of new houses and, therefore, the expected number of additional students would be very small, and there would be little or no impact on the local schools. At the upper bound, the much larger number of housing units could result in a substantial increase in the student population and a greater impact on the local schools.

4.8.1.4 Police and fire protection

The existing levels of police and fire protection are adequate for any future residential development on Parcel ED-6, and the proposed action is expected to have minimal impact on police and fire protection resources.

4.8.1.5 Fiscal impacts

The main impact of the transfer is likely to be its effect on city of Oak Ridge finances. Potential positive impacts include additional tax revenues generated by private ownership and development of Parcel ED-6, increased land values in the developed parcel, and potential increases in sales tax revenue if new residents make enough purchases within the city. Potential negative fiscal impacts include loss of the

DOE PILT revenues for approximately 362 acres once they are transferred into private hands, and any additional costs to provide services to a new residential area.

To estimate the potential impact of the proposed action on property tax revenue, when the details of development are uncertain, this analysis makes the assumptions listed below. These assumptions are intended to identify the maximum positive or negative impacts likely to result from the proposed action to determine whether they may lead to secondary environmental impacts that need to be considered in this assessment.

1. Housing density after development will fall within the range of housing density currently available in Oak Ridge.
2. The values of new housing units will conform to the target range of \$90,000 to \$300,000 per unit, identified in the City's Strategic Plan (City of Oak Ridge 2004).
3. DOE would remove 362 acres from its calculated PILT after the land is transferred.
4. PILT calculation would be based on \$5,327 per acre, 25% assessment rate (City of Oak Ridge 2004).
5. City tax rate of \$2.87 per \$100 of assessed value (City of Oak Ridge 2004).

According to the 2000 Census, housing density in Oak Ridge City ranged from 28.4 units per square mile in the Roane County portion of the city to 276.5 units per square mile in the Anderson County portion. For comparison, the overall average for the Knoxville Metropolitan Statistical Area (Anderson, Blount, Knox, Loudon, and Union counties) is 128.0 housing units per square mile. Because the 362 acres in Parcel ED-6 represent just over half a square mile ($362/640$ acres/square mile = 0.566), the potential number of housing units could range from 16 (0.566×28.4) to 156 (0.566×276.5). Using these estimates and the assumptions above, upper and lower bounds for potential impacts on property tax revenues can be calculated, as shown in [Table 4.1](#).

Table 4.1. Potential property tax impacts of ED-6 residential development

Housing density	Total housing units	Value/unit	Total value	Assessed value ($\times 0.25$)	Property tax revenue	PILT reduction	Net tax revenue
Lower bound	16	\$90,000	\$1,440,000	\$360,000	\$10,332	(\$13,836)	(\$3,504)
Upper bound	156	\$300,000	\$46,800,000	\$11,700,000	\$335,790	(\$13,836)	\$321,954

Tax rate = \$2.87/\$100 assessed value.

Payment-in-lieu-of-tax (PILT) reduction = $362 \text{ acres} \times \$5,327/\text{acre} \times 0.25 \times \$2.87/\$100 = \$13,836$.

The lower bound assumptions identify a potential loss of tax revenue, although the loss would represent a negligible change in total city revenues (<0.01%). Although the potential gain in tax revenue is much larger, it also represents a very small change (1%) in total city revenue.

4.8.2 No Action

Under the no-action alternative, there would be no change in anticipated population, employment, income, or fiscal characteristics, and no disproportionate effect on minority or low-income populations. The no-action alternative would also not have any impacts on schools or police and fire protection.

4.8.3 Mixed Development Alternative

Under the mixed development alternative, potential socioeconomic impacts would be similar to those described for the proposed action, but with additional positive impacts on employment, income, and city finances. The analysis below uses the same assumptions as for the proposed alternative, with the following changes:

1. ten percent of the acreage (36 acres) is used for commercial development (office or retail);
2. property tax revenue from residential development would be reduced by 10% from the value shown for the proposed alternative;
3. value of commercially developed land will range from \$400,000 to \$1,600,000 per acre, as estimated in the Land Use Technical Report (ORNL 2002);
4. commercial land is assessed at 40% of value; and
5. commercial development will generate seven jobs per acre, as estimated in the Land Use Technical Report (ORNL 2002).

4.8.3.1 Population

Impacts under this alternative would be the same as those described under the proposed action.

4.8.3.2 Employment and income

Based on the assumptions above, successful commercial development would create an estimated 252 jobs (7 jobs/acre × 36 acres), for a net change of 0.3% in ROI employment compared to the 2002 baseline. The expected change in income would be similar to the change in employment.

4.8.3.3 Schools

Impacts to Oak Ridge City schools would be the same as those described for the proposed action.

4.8.3.4 Police and fire protection

The addition of commercial development would not impact police and fire protection resources provided by the city of Oak Ridge.

4.8.3.5 Fiscal impacts

Under the mixed development alternative, potential fiscal impacts would include the property tax revenue from both residential and commercial development, and sales tax revenue from any retail establishments in the development. Based on the assumptions above, estimated property tax from commercial development could range from \$165,312 to \$661,248, as shown in [Table 4.2](#). [Table 4.3](#) shows the range of the potential impact on net revenues, using the assumptions identified above. The lower bound on net tax revenue would then be \$160,755, or less than 1% of city of Oak Ridge revenues. At the upper bound, \$949,623 would represent an increase of about 3% in city revenues.

Table 4.2. Potential property tax revenue from ED-6 commercial development

	Acres	Value/acre	Total value	Assessed value (× 0.40)	Property tax revenue: Commercial
Lower bound	36	\$400,000	\$14,400,000	\$5,760,000	\$165,312
Upper bound	36	\$1,600,000	\$57,600,000	\$23,040,000	\$661,248

Table 4.3. Potential net property tax revenue from ED-6 with limited commercial development

	Residential property tax revenue^a	Commercial property tax revenue	PILT reduction	Net tax revenue
Lower bound	\$9,299	\$165,312	(\$13,836)	\$160,775
Upper bound	\$302,211	\$661,248	(\$13,836)	\$949,623

^a90% of residential tax revenues from Sect. 4.8.1.5.

PILT = payment-in-lieu-of-tax.

4.8.4 Conservation Easement Alternative

Under the Conservation Easement Alternative, there would be no change in anticipated population, employment, income, or fiscal characteristics, and no disproportionate effect on minority or low-income populations. This alternative would also not have any impacts on schools or police and fire protection. DOE would retain ownership of the land, and there would be no change in the PILT.

4.9 INFRASTRUCTURE

4.9.1 Transportation

4.9.1.1 Proposed action

New development at Parcel ED-6 would not be large enough to have more than a minor increase in the amount of traffic entering and exiting Wisconsin Avenue and the Oak Ridge Turnpike. A minor increase in the amount of traffic should also not substantially increase the chance of accidents occurring.

Construction of a new DOE boundary control road may require a new connection with the Oak Ridge Turnpike (SR 95), which would need to be considered in any highway improvements planned by the Tennessee Department of Transportation.

4.9.1.2 No action

Under the no-action alternative, there would be little to no change from the baseline level of vehicle trips or the potential for accidents involving vehicles in the vicinity of Parcel ED-6. At the baseline level of activity, traffic volume is considered to be within the existing transportation infrastructure's capacity.

4.9.1.3 Mixed development alternative

Potential transportation impacts under this alternative would be similar to those described for the proposed action.

4.9.1.4 Conservation easement alternative

Under this alternative, traffic on the Oak Ridge Turnpike and Wisconsin Avenue would remain close to the baseline level. This alternative would also include the construction of a new DOE boundary patrol road with the same potential impacts as described under the proposed action.

4.9.2 Utilities

4.9.2.1 Proposed action

Under the proposed action, utility impacts would be expected to be minimal. New development at Parcel ED-6 could connect to the existing city of Oak Ridge utility systems that already exist in the area. Construction of new utility infrastructure would be limited to the new housing development. The additional utility demand for the new residential development should not exceed the capacities of the existing Oak Ridge utility systems.

4.9.2.2 No action

No additional utility impacts would occur under the no-action alternative.

4.9.2.3 Mixed development alternative

Potential utility impacts under this alternative would be similar to those described for the proposed action. Utility demand could be slightly greater with the addition of some commercial development along with the new residential development, but still would be within the existing utility capacity.

4.9.2.4 Conservation easement alternative

This alternative is similar to the no-action alternative, and there would not be any additional utility impacts.

4.10 NOISE

4.10.1 Proposed Action

Site preparation, road and utility installation, and construction of new homes would generate intermittent noise above the current background level. Potential noise sources include heavy construction equipment, trucks, and power tools. Equipment, such as front-end loaders and backhoes, would produce noise levels around 73 to 94 “A-weighted decibels” (dBA) at 50 ft from the work site under normal working conditions (Magrab 1975, Cantor 1996). Noise from heavy equipment operation would primarily occur during the site preparation phase of construction. House building would create noise levels slightly above normal background. Sound levels would be expected to dissipate to background levels within a relatively short distance and would be intermittent and temporary. Construction activities normally would be limited to daytime hours, and thus would not impact existing background noise levels at night. Sensitive noise sources near or on Parcel ED-6 include the North Boundary Greenway and the homes along Whippoorwill Drive. Although Parcel ED-6 is relatively isolated and not within an area of extensive urban development, it is also impacted somewhat by nearby traffic noise generated from vehicles traveling on the Oak Ridge Turnpike.

4.10.2 No Action

Under the no-action alternative, there would be no additional noise impacts above baseline conditions.

4.10.3 Mixed Development Alternative

Under this alternative noise impacts would be expected to be similar to those described for the proposed action.

4.10.4 Conservation Easement Alternative

There would be no additional noise impacts above baseline conditions since no development of Parcel ED-6 would occur.

5.0 CUMULATIVE IMPACTS

This chapter considers the impacts from other actions that could, along with the potential effects from the proposed action, result in cumulative impacts to the environment. Cumulative impacts are defined as “... the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions” (40 *CFR* 1508.7). Impacts are considered on a cumulative basis because significant effects are often the result of individually minor direct and indirect effects of multiple actions that occur over time. Cumulative impacts should be considered over the “lifetime” of the impacts, rather than only the duration of the action.

Impacts were evaluated in Chap. 4 using the no-action alternative as a baseline for comparison against the proposed action. Other actions with similar potential effects to the proposed action could act synergistically or additively with the effects discussed in Chap. 4, thereby increasing the potential adverse or beneficial impacts on a cumulative basis. If a resource area would not be affected as a result of taking an action, there would, of course, be no cumulative impact potentially resulting from the action either.

Identification of other actions that could result in cumulative impacts when combined with the proposed action is based on actions likely to have similar potential impacts within the same geographic area and over the same timeframe. Ongoing actions near Parcel ED-6 that are considered pertinent to the analysis of cumulative impacts include the proposed BORCE, continued reindustrialization of ETTP (Heritage Center), further development of the Horizon Center, Rarity Ridge, and other residential development within the city of Oak Ridge.

5.1 CUMULATIVE IMPACTS BY RESOURCE AREA

5.1.1 Land Use

Of the original 58,575 acres of land purchased in 1942 by the federal government, 24,829 acres have been conveyed and 33,746 acres remain within ORR. The purposes for which ORR land has been conveyed include: 16,855 acres for residential, commercial, and community development; 1031 acres to federal agencies and for transportation easements; 3208 acres for preservation and recreation; 3728 acres for industrial development; and 7 acres for mission-related purposes. Current land outgrants (lease/license/permit areas) include 3498 acres for preservation/recreation and 485 acres for industrial development. Title transfer of land and facilities at ETTP could potentially remove an additional 1600 acres of land. However, the majority of the ETTP area being considered for title transfer has already been developed for industrial purposes or been impacted in some other way.

A few changes in the acreage of NERP have occurred over the past 23 years. When designated in 1980, the size of NERP was about 13,590 acres. Some research land was lost with the sale of the former Boeing property (Rarity Ridge) and some other land areas. In 1998, the NERP designation was removed from the ETTP Area of Responsibility and the Horizon Center. Since then NERP has been expanded to include most of the undeveloped area of ORR and is currently about 20,000 acres. The BORCE resulted in approximately 3000 acres of ORR land being set aside for conservation and recreation purposes. It is assumed that the NERP designation for this area would remain.

Conveyance of Parcel ED-6 would remove approximately 360 additional acres of land from ORR. Because the total area is small compared to the remaining ORR land (1%), the change in land use would result in a minor cumulative impact to land use.

5.1.2 Air Quality

Although the proposed action evaluated in this EA does not have the potential to bring about major impacts to air quality, new industrial development, increased traffic, and general population growth in Roane and Anderson counties continues to adversely impact air quality in the region. Construction activities can be a major source of emissions, particularly particulates in the form of fugitive dust. Such sources tend to be of short duration (during the construction period) and largely result in impacts of a localized nature that can be mitigated with appropriate controls.

5.1.3 Socioeconomics

Nearby developments may also increase employment in the ROI. Major initiatives include development of the nearby Horizon Center, reindustrialization activities at the Heritage Center, the Spallation Neutron Source (SNS) project at ORNL, the Roane Regional Business and Technology Park, and the Rarity Ridge residential/commercial development. Residential development of Parcel ED-6 would have a marginal impact compared with the Rarity Ridge development. For example, development of Parcel ED-6 could have a minor impact on the Linden school district depending on the demographics of new residents, but Rarity Ridge could require a new school by the time the development is completed.

Information available to project employment associated with the Rarity Ridge development and the Oak Ridge Industrial Center is limited. However, a recent analysis developed for land use planning estimated that if ETTP redevelopment and other initiatives succeed during the next 20 years, the cumulative impact could result in up to 25,000 direct and indirect new jobs, or an increase of 6.9% over the 2000 ROI employment figures (ORNL 2002). This rate is about 0.3% per year. Given the uncertainties surrounding future success of any of these initiatives, this represents an upper bound on the cumulative employment impacts. This increase falls well within the historical growth rates for the region and is not expected to create an undue strain on local socioeconomic resources.

5.1.4 Biodiversity

The greatest threat to reduced biodiversity of an area or region is conversion of cover types from natural systems to completely different and maintained systems. As an example, the conversion of an upland hardwood forest to pasture or hayfield use can result in nearly the same loss of biodiversity as if the woodland were converted to industrial use.

Growth and development in the region surrounding ORR is putting increased pressure on the biodiversity of the Ridge and Valley Ecoregion. Development within ORR (e.g., SNS and the transfer of the Horizon Center) has removed some additional land from the Reservation, but the impact on biodiversity has probably been minimal since much of the core area of the Reservation and most sensitive areas have been avoided or potential impacts have been mitigated. Also, much of the development and reindustrialization on ORR is taking place within previously disturbed and/or developed areas within and surrounding the major plant areas. Actions such as the BORCE have the potential to provide long-term protection for some of the most ecologically sensitive areas on the Reservation, and ORR continues to be a biologically rich resource that provides protection for large land areas and the biodiversity found within those protected areas.

6.0 LIST OF AGENCIES AND PERSONS CONTACTED

The following agencies and persons were contacted for information and data used in the preparation of this EA.

Name	Affiliation	Location	Topic
Lee Barclay	U. S. Fish and Wildlife Service	Cookeville, TN	Endangered Species Act, Sect. 7 – Informal Consultation
Amy Fitzgerald	City of Oak Ridge	Oak Ridge, TN	Socioeconomics
Joseph Garrison	Tennessee Historical Commission	Nashville, TN	National Historic Preservation Act, Sect. 106 – Compliance

7.0 REFERENCES

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USDA (U. S. Department of Agriculture) 1942. Soil Survey, Roane County, Tennessee, Bureau of Plant Industry, Tennessee Agriculture Experiment Station.

APPENDIX A

FEDERAL REGISTER NOTICE OF RULE

§ 299.1 Prescribed forms.

Form No.	Edition date	Title
I-129W	12-22-99	H-1B Data Collection and Filing Fee Exemption.

7. Section 299.5 is amended in the table by revising the entry for Form "129W" to read as follows:

§ 299.5 Display of control numbers.

INS form No.	INS form title	Currently assigned OMB Control No.
I-129W	H-1B Data Collection and Filing Exemption	1115-0225

Dated: February 24, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

(FR Doc. 00-4766 Filed 2-28-00; 8:45 am)

BILLING CODE 4410-10-M

DEPARTMENT OF ENERGY

[Docket No. FM-RM-99-RPROP]

10 CFR PART 770

RIN 1901-AA82

Transfer of Real Property at Defense Nuclear Facilities for Economic Development

AGENCY: Department of Energy.

ACTION: Interim final rule and opportunity for public comment.

SUMMARY: The Department of Energy (DOE) is establishing a process for disposing of unneeded real property at DOE's defense nuclear facilities for economic development. Section 3158 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, directs DOE to prescribe regulations which describe procedures for the transfer by sale or lease of real property at such defense nuclear facilities. Transfers of real property under these regulations are intended to offset negative impacts on communities caused by unemployment from related DOE downsizing, facility closeouts and work force restructuring at these

facilities. Section 3158 also provides discretionary authority to the Secretary to indemnify transferees of real property at DOE defense nuclear facilities. This regulation sets forth the indemnification procedures.

EFFECTIVE DATE: This rule is effective February 29, 2000. Comments on the interim final rule should be submitted by April 14, 2000. Those comments received after this date will be considered to the extent practicable.

ADDRESSES: Send comments (3 copies) to James M. Cayce, U.S. Department of Energy, Office of Management and Administration, MA-53, 1000 Independence Avenue, SW, Washington, D.C. 20585. The comments will be included in Docket No. FM-RM-99-PROP and they may be examined between 9:00 a.m. and 4:00 p.m. at the U.S. Department of Energy Freedom of Information Reading Room, Room 1E-190, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-6020.

FOR FURTHER INFORMATION CONTACT: James M. Cayce, U.S. Department of Energy, MA-53, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586-0072.

SUPPLEMENTARY INFORMATION:**I. Background**

DOE's real property consists of about 2.4 million acres and over 21,000 buildings, trailers, and other structures and facilities. In the eight years since the end of the Cold War, DOE has been engaged in a two-part process in which DOE reexamines its mission need for real property holdings, and then works to clean up the land and facilities that have been contaminated with hazardous chemicals and nuclear materials. The end result will be the availability, over time and to widely varying degree at DOE sites, of real property for transfer. DOE may sell or lease real property under a number of statutory authorities. The primary authorities are section 161g of the Atomic Energy Act (42 U.S.C. 2201(g)) and sections 646(c)-(f) (also known as the "Hall Amendment") and 649 of the Department of Energy Organization Act, as amended (42 U.S.C. 7256(c)-(f) and 7259). Section 161g of the Atomic Energy Act broadly authorizes DOE to transfer real property by sale or lease to another party. Section 649 applies to leasing of underutilized real property. Section 646(c)-(f) applies to specific facilities that are to be closed or reconfigured. In addition, DOE may declare real property as "excess, underutilized or temporarily underutilized," and dispose of such real property under provisions of the Federal

Property and Administrative Services Act, 40 U.S.C. 472 *et seq.* With the exception of sections 646(c)-(f) of the DOE Organization Act, these authorities do not deal specifically with transfer of real property for economic development.

In section 3158 of the National Defense Authorization Act for Fiscal Year 1998 ("Act"), Congress directed DOE to prescribe regulations specifically for the transfer by sale or lease of real property at DOE defense nuclear facilities for the purpose of permitting economic development (42 U.S.C. 7274q(a)(1)). Section 3158 also provides that DOE may hold harmless and indemnify a person or entity to whom real property is transferred against any claim for injury to person or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant as a result of DOE (or predecessor agency) activities at the defense nuclear facility (42 U.S.C. 7274q(b)). The indemnification provision in section 3158 is similar to provisions enacted for the Department of Defense Base Realignment and Closure program under Section 330 of the Defense Authorization Act for Fiscal Year 1993, Public Law 102-484.

The indemnification provisions in section 3158 aid these transfers for economic development because, even at sites that have been remediated in accordance with applicable regulatory requirements, uncertainty and risk to capital may be presented by the possibility of as-yet undiscovered contamination remaining on the property. Potential buyers and lessees of real property at defense nuclear facilities have sometimes expressed a need to be indemnified as part of the transfer. Furthermore, indemnification often is requested by lending or underwriting institutions which finance the purchase, redevelopment, or future private operations on the transferred property to protect their innocent interests in the property.

Indemnification may be granted under this rule when it is deemed essential for facilitating local reuse or redevelopment as authorized under 42 U.S.C. 7274q.

This rule is not intended to affect implementation of the Joint Interim Policy that DOE and the Environmental Protection Agency (EPA) entered into on June 21, 1998, to implement the consultation provisions of the Hall Amendment (42 U.S.C. 7256(e)). The Joint Interim Policy provides specific direction for instances in which Hall Amendment authority is used by DOE to enter into leases at DOE sites which are on the EPA's National Priorities List. As

stated in the scope of the joint policy, at National Priorities List sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of a lease agreement are "consistent with safety and protection of public health and the environment."

II. Section-by-Section Discussion

The following discussion presents information related to some of the provisions in today's interim final rule, and explains DOE's rationale for those provisions.

1. Section 770.2 (Coverage)

Generally, real property covered by these regulations includes land and facilities at DOE defense nuclear facilities offered for sale or lease for the purpose of permitting the economic development of the property. Leases of improvements to real property that has been withdrawn from the public domain are covered, but not the withdrawn land. If any of these improvements are removable, they can be transferred under this part.

2. Section 770.4 (Definitions)

DOE has included a definition of "Community Reuse Organization" (CRO) in this rule. CROs are established and funded by DOE to implement community transition activities under section 3161 of the National Defense Authorization Act for Fiscal Year 1993 (42 U.S.C. 7274h). Membership in a CRO is composed of a broad representation of persons and entities from the affected communities. The CRO coordinates local community transition planning efforts with the DOE's Federal Advisory Committees, "Site Specific Advisory Boards," and others to counter adverse impacts from DOE work force restructuring. CROs may act as agent or broker for parties interested in undertaking economic development actions, and they can assure a broad range of participation in community transition activities.

Section 3158 defines "defense nuclear facility" by cross-reference to the definition in section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286(g)). These facilities are atomic energy defense facilities involved in production or utilization of special nuclear material; nuclear waste storage or disposal facilities; testing and assembly facilities; and atomic weapons research facilities, which are under the control or jurisdiction of the Secretary of Energy. DOE has identified the facilities receiving funding for atomic energy defense activities (with the exception of activities under Office of Naval Reactors) which are covered by the

definition. A list of these defense nuclear facilities is included at the end of this section-by-section discussion for the convenience of the interested public.

"Excess real property" is DOE property that, after screening at all levels of DOE, is found to be unneeded for any of the DOE's missions.

The term "underutilized real property" means an entire parcel of real property, or a portion of such property, that is used at irregular intervals or for which the mission need can be satisfied with only a portion of the property. These designations are reviewed on an annual basis by the certified real property specialist at each Field Office.

3. Sections 770.5 and 770.6 (Identification of Real Property for Transfer)

DOE annually conducts surveys of its real property to determine if the property is being fully utilized. In a related process, DOE annually reviews its real property to identify property that is no longer needed for DOE missions. Real property covered by this part will be initially identified by these two processes. Under this part, Field Office Managers will provide the established CRO, and other interested persons and entities with a list of the real property that may be transferred under these regulations. Field Office Managers may make this list available by mail to known entities, or other means (such as posting on DOE Internet sites), or upon request. DOE will provide existing information on listed property, including its policies under the relevant transfer authority, information on the physical condition of the property, environmental reports, safety reports, known use restrictions, leasing term limitations and other pertinent information. Section 770.6 provides that a CRO or other person or entity may request that the Field Office Manager make available specific real property for possible transfer in support of economic development.

4. Section 770.7 (Transfer Process)

To initiate the transfer process, the potential purchaser or lessee must prepare and provide to the Field Office Manager a proposal for the transfer of real property at a defense nuclear facility for economic development. The proposal must contain enough detail for DOE to make an informed determination that the transfer, by sale or lease, would be in the best interest of the Government. Every proposal must include the information specified in section 770.7(a)(1) relating to the scope

and economic development impact of the proposed transfer. A proposal must include: a description of the real property proposed to be transferred; the intended use and duration of use of the real property; a description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made); information supporting the economic viability of the proposed development; and the consideration offered and any financial requirements. A proposal also should explicitly state if indemnification against claims is or is not being requested, and, if requested, the specific reasons for the request and a certification that the requesting party has not caused contamination on the property. This requirement stems from section 3158(b) of the Act, which requires DOE to include in any agreement for the sale or lease of real property provisions stating whether indemnification is or is not provided (42 U.S.C. 7274q(b)).

Paragraph 770.7(b) provides that DOE will review a proposal and within 90 days notify the person or entity submitting the proposal of its decision on whether the transfer is in the best interest of the Government and DOE's intent to proceed with development of a transfer agreement. DOE may consider a variety of factors in making its decision, such as the adverse economic impacts of DOE downsizing and realignment on the region, the public policy objectives of the laws governing the downsizing of DOE's production complex, the extent of state and local investment in any proposed projects, the potential for short- and long-term job generation, the financial responsibility of the proposer, current market conditions, and potential benefits to the federal government from the transfer. Since many defense nuclear facilities have ongoing missions, particular transfers may be subject to use restrictions that are made necessary by specific security, safety, and environmental requirements of the DOE facility. If DOE does not find the transfer is in the best interest of the Government and will not pursue a transfer agreement, it will, by letter, inform the person or entity that submitted it of DOE's decision and reasons. Agreement by DOE to pursue development of a transfer agreement does not commit DOE to the project or constitute a final decision regarding the transfer of the property.

Section 3158 of the Act prohibits DOE from transferring real property for economic development until 30 days have elapsed following the date on which DOE notifies the defense

committees of Congress of the proposed transfer of real property. Therefore, if DOE determines that a proposal would be in the best interest of the Government, it then will notify the congressional defense committees of the proposed transfer. In particular instances, it is possible that this notification requirement may delay the development of the transfer agreement.

Before a proposed transfer agreement is finalized, the Field Office Manager must ensure that DOE's National Environmental Policy Act (NEPA) environmental review process is completed. Depending on the transfer authority used and the condition of the real property, other agencies may need to review or concur with the terms of the agreement. For example, for Hall Amendment leases at National Priorities List sites, EPA was given the authority to concur in the DOE determination that the terms and conditions of a lease agreement are consistent with safety and the protection of public health and the environment. The DOE will also comply with any other applicable land transfer statutes.

DOE has established policy that requires public participation in the land and facility planning, management, and disposition decision process (under DOE O 403.1A, Life Cycle Asset Management). Generally, because the proposals are likely to be generated by or in coordination with a CRO, a separate public involvement process should not be necessary. However, there may be instances in which a specific authority requires separate or additional procedures (e.g., commitments in agreements signed with tribal, state, or local governments).

5. Section 770.8 (Transfer for Less Than Fair Market Value)

The House Conference Report for the Act (105-340) noted that DOE should address in this part, when it is appropriate for DOE to transfer or lease real property below fair market value or at fair market value. DOE will generally pursue fair market value for real property transferred for economic development. DOE may, however, agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction and the real property requires considerable infrastructure improvements to make it economically viable, or if in DOE's judgment a conveyance at less than market value would further the public policy objectives of the laws governing the downsizing of defense nuclear facilities. DOE has the authority to transfer real and personal property at

less than fair market value (or without consideration) in order to help local communities recover from the effects of downsizing of defense nuclear facilities.

6. Sections 770.9-770.11 (Indemnification)

DOE real property often is viewed by the public as a potential liability even if it has been cleaned to specific regulatory requirements. To improve the marketability of previously contaminated land and facilities, DOE may indemnify a person or entity to whom real property is transferred for economic development against any claim for injury to persons or property that results from the release or threatened release of a hazardous substance, pollutant or contaminant attributable to DOE (or predecessor agencies).¹ DOE will enter into an indemnification agreement under this rule if a person or entity requests it, and indemnification is deemed essential for the purposes of facilitating reuse or redevelopment. A claim for injury to person or property will be indemnified only if an indemnification provision is included in the agreement for sale or lease and in subsequent deeds or leases.

This general DOE indemnification policy is subject to the conditions in section 770.9 of this part. As provided by section 3158(c)(1) of the Act (42 U.S.C. 7274q(c)(1)), a person or entity who requests indemnification under a transfer agreement must notify DOE (the Field Office Manager) in writing within two years after the claim accrues.

Section 770.9 contains several other requirements and conditions that are taken from section 3158(c)(1) of the Act. The person or entity requesting indemnification for a particular claim must furnish the Field Office Manager pertinent papers regarding the claim received by the person or entity, and any evidence or proof of the claim; and must permit access to records and personnel for purposes of defending or settling the claim.

DOE also is prohibited by section 3158(b)(3) from indemnifying a person or entity for a claim "to the extent the persons and entities * * * contributed to any such release or threatened release" (42 U.S.C. 7274q(b)(3)). This

¹ Regardless of the existence of an indemnification agreement, DOE would be responsible for the release, or threatened release of a hazardous substance or pollutant or contaminant resulting from the activities of DOE or its predecessor agencies, if the property was not remediated to required standards. This would also apply to early transfers, by sale or lease, of contaminated real property under Section 120(h)(3)(C) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9620(h)(3)(C).

limitation on DOE's ability to indemnify potentially liable parties is included in the rule in paragraph 770.9(b).

One additional statutory limitation on indemnification is that DOE may not indemnify a transferee for a claim, even if an indemnification agreement exists, if the person requesting indemnification does not allow DOE to settle or defend the claim. This limitation is in paragraph 770.9(c), and it is required by section 3158(d)(2) of the Act (42 U.S.C. 7274q(d)(2)).

Section 770.10 provides, as stipulated in the Act, that if an indemnification claim is denied by DOE, the person or entity must be informed through a notice of final denial of a claim by certified or registered mail. If the person or entity wishes to contest the denial, then that person or entity must begin legal action within six months after the date of mailing of a notice of final denial of a claim by DOE. (42 U.S.C. 7274q(c)(1)).

Section 770.11 incorporates the Act's provision that a claim "accrues" on the date on which the person asserting the claim knew (or reasonably should have known) that the injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located. (42 U.S.C. 7274q(c)(2)). DOE may not waive this timeliness requirement.

Appendix to Preamble of 10 CFR Part 770

List of Defense Nuclear Facilities:
This list consists of the defense nuclear facilities noted as covered facilities in House Report 105-137, and is not meant to be inclusive.

Argonne National Laboratory
Brookhaven National Laboratory
Fernald Environmental Management Project Site
Hanford Site
Idaho National Engineering and Environmental Laboratory
Kansas City Plant
K-25 Plant (East Tennessee Technology Park)
Lawrence Livermore National Laboratory
Los Alamos National Laboratory
Mound Facility
Nevada Test Site
Oak Ridge Reservation
Oak Ridge National Laboratory
Paducah Gaseous Diffusion Plant
Pantex Plant
Pinellas Plant
Portsmouth Gaseous Diffusion Plant
Rocky Flats Environmental Technology Site

Sandia National Laboratory
Savannah River Site
Waste Isolation Pilot Project
Y-12 Plant

III. Public Comment

The interim final rule published today relates to public property and, therefore, is exempt from the notice and comment rulemaking requirements in the Administrative Procedure Act, 5 U.S.C. 553. Nonetheless, DOE is providing an opportunity for interested persons to submit written comments on the interim final rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this rule. All comments received will be available for public inspection in the Department of Energy Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 9 a.m. and 4 p.m., Monday through Friday, except federal holidays. All written comments received on or before the date specified in the beginning of this rule will be considered by DOE. Comments received after that date will be considered to the extent that time allows.

Any person submitting information or data that is believed to be confidential, and exempt by law from public disclosure, should submit one complete copy of the document and two additional copies from which the information believed to be confidential has been deleted. DOE will make its own determination with regard to the confidential status of the information and treat it as provided in 10 CFR 1004.11.

IV. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," 58 FR 51735 (October 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Today's

interim final rule concerning the sale or lease of real property at defense nuclear facilities is not subject to the Regulatory Flexibility Act because neither the Administrative Procedure Act (5 U.S.C. 553(a)(2)), nor any other law requires DOE to propose the rule for public comment.

C. Review Under the Paperwork Reduction Act

No new collection of information is imposed by this interim final rule. Accordingly, no clearance by the Office of Management and Budget is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

Under the Council on Environmental Quality regulations (40 CFR Parts 1500-1508), DOE has established guidelines for its compliance with the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). This interim final rule establishes procedures for real property transfers for economic development. Because the rule is procedural, it is covered by the Categorical Exclusion in paragraph A6 of Appendix A to Subpart D, 10 CFR Part 1021. Accordingly, neither an environmental assessment nor an environmental impact statement is required. As paragraph 770.3(b) of the rule notes, individual proposals for the transfer of property are subject to appropriate NEPA review.

E. Review Under Executive Order 13132

Executive Order 13132, "Federalism," 64 FR 43255 (August 4, 1999), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the federal government and the states, or in the distribution of power and responsibilities among the various levels of government. DOE has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 13132, and has determined that this rule will not have a substantial direct effect on states, the established relationship between the states and the federal government or the distribution of power and responsibilities among the various levels of government.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," 61 FR 4729 (February 7, 1996), imposes on federal agencies the general

duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) Clearly specifies any effect on existing federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that this interim final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. No. 104-4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of state, local, and tribal governments on a proposed "significant intergovernmental mandate," and it requires an agency to develop a plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirement that might significantly or uniquely affect small governments. The interim final rule published today does not contain any federal mandate, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act of 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105-277) requires federal agencies to issue a Family Policymaking Assessment for any

proposed rule or policy that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Congressional Notification

As required by 5 U.S.C. 801, DOE will submit to Congress a report regarding the issuance of today's interim final rule prior to the effective date set forth at the outset of this notice. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 801(2).

List of Subjects in Part 770

Federal buildings and facilities, Government property, Government property management, Hazardous substances.

Issued in Washington, on January 21, 2000.

Edward R. Simpson,
Acting Director of Procurement and Assistance Management.

For the reasons set forth in the preamble, Title 10, Chapter III, of the Code of Federal Regulations is amended by adding a new part 770 as set forth below:

PART 770—TRANSFER OF REAL PROPERTY AT DEFENSE NUCLEAR FACILITIES FOR ECONOMIC DEVELOPMENT

Sec.

- 770.1 What is the purpose of this part?
- 770.2 What real property does this part cover?
- 770.3 What general limitations apply to this part?
- 770.4 What definitions are used in this part?
- 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?
- 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?
- 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?
- 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?
- 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?
- 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?

770.11 When does a claim "accrue" for purposes of notifying the Field Office Manager under § 770.9(a) of this part?

Authority: 42 U.S.C. 7274q.

§ 770.1 What is the purpose of this part?

(a) This part establishes how DOE will transfer by sale or lease real property at defense nuclear facilities for economic development.

(b) This part also contains the procedures for a person or entity to request indemnification for any claim that results from the release or threatened release of a hazardous substance or pollutant or contaminant as a result of DOE activities at the defense nuclear facility.

§ 770.2 What real property does this part cover?

(a) DOE may transfer DOE-owned real property by sale or lease at defense nuclear facilities, for the purpose of permitting economic development.

(b) DOE may transfer, by lease only, improvements at defense nuclear facilities on land withdrawn from the public domain, that are excess, temporarily underutilized, or underutilized, for the purpose of permitting economic development.

§ 770.3 What general limitations apply to this part?

(a) Nothing in this part affects or modifies in any way section 120(h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9620(h)).

(b) Individual proposals for transfers of property are subject to NEPA review as implemented by 10 CFR Part 1021.

(c) Any indemnification agreed to by the DOE is subject to the availability of funds.

§ 770.4 What definitions are used in this part?

Community Reuse Organization or CRO means a governmental or non-governmental organization that represents a community adversely affected by DOE work force restructuring at a defense nuclear facility and that has the authority to enter into and fulfill the obligations of a DOE financial assistance agreement.

Claim means a request for reimbursement of monetary damages.

Defense Nuclear Facility means "Department of Energy defense nuclear facility" within the meaning of section 318 of the Atomic Energy Act of 1954 (42 U.S.C. 2286g).

DOE means the United States Department of Energy.

DOE Field Office means any of DOE's officially established organizations and components located outside the

Washington, D.C., metropolitan area. (See Field Office Manager.)

Economic Development means the use of transferred DOE real property in a way that enhances the production, distribution, or consumption of goods and services in the surrounding region(s) and furthers the public policy objectives of the laws governing the downsizing of DOE's defense nuclear facilities.

Excess Real Property means any property under DOE control that the Field Office, cognizant program, or the Secretary of Energy have determined, according to applicable procedures, to be no longer needed.

Field Office Manager means the head of the DOE Operations Offices or Field Offices associated with the management and control of defense nuclear facilities.

Hazardous Substance means a substance within the definition of "hazardous substances" in subchapter I of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601(14)).

Indemnification means the responsibility for reimbursement of payment for any suit, claim, demand or action, liability, judgment, cost, or other fee arising out of any claim for personal injury or property damage, including business losses consistent with generally accepted accounting practices, which involve the covered real property transfers. Indemnification payments are subject to the availability of appropriated funds.

Person or Entity means any state, any political subdivision of a state or any individual person that acquires ownership or control of real property at a defense nuclear facility.

Pollutant or Contaminant means a substance identified within the definition of "pollutant or contaminant" in section 101(33) of CERCLA (42 U.S.C. 9601(33)).

Real Property means all interest in land, together with the improvements, structures, and fixtures located on the land (usually including prefabricated or movable structures), and associated appurtenances under the control of any federal agency.

Release means a "release" as defined in subchapter I of CERCLA (42 U.S.C. 9601(22)).

Underutilized Real Property or Temporarily Underutilized Real Property means the entire property or a portion of the real property (with or without improvements) that is used only at irregular intervals, or which is used by current DOE missions that can be satisfied with only a portion of the real property.

§ 770.5 How does DOE notify persons and entities that defense nuclear facility real property is available for transfer for economic development?

(a) Field Office Managers annually make available to Community Reuse Organizations and other persons and entities a list of real property at defense nuclear facilities that DOE has identified as appropriate for transfer for economic development. Field Office Managers may use any effective means of publicity to notify potentially-interested persons or entities of the availability of the list.

(b) Upon request, Field Office Managers provide to interested persons and entities relevant information about listed real property, including information about a property's physical condition, environmental, safety and health matters, and any restrictions or terms of transfer.

§ 770.6 May interested persons and entities request that real property at defense nuclear facilities be transferred for economic development?

Any person or entity may request that specific real property be made available for transfer for economic development pursuant to procedures in § 770.7. A person or entity must submit such a request in writing to the Field Office Manager who is responsible for the real property.

§ 770.7 What procedures are to be used to transfer real property at defense nuclear facilities for economic development?

(a) *Proposal.* The transfer process starts when a potential purchaser or lessee submits to the Field Office Manager a proposal for the transfer of real property that DOE has included on a list of available real property, as provided in § 770.5 of this part.

(1) A proposal must include (but is not limited to):

- (i) A description of the real property proposed to be transferred;
- (ii) The intended use and duration of use of the real property;
- (iii) A description of the economic development that would be furthered by the transfer (e.g., jobs to be created or retained, improvements to be made);
- (iv) Information supporting the economic viability of the proposed development; and
- (v) The consideration offered and any financial requirements.

(2) The person or entity should state in the proposal whether it is or is not requesting indemnification against claims based on the release or threatened release of a hazardous substance or pollutant or contaminant resulting from DOE activities.

(3) If a proposal for transfer does not contain a statement regarding indemnification, the Field Office Manager will notify the person or entity by letter of the potential availability of indemnification under this part, and will request that the person or entity either modify the proposal to include a request for indemnification or submit a statement that it is not seeking indemnification.

(b) *Decision to transfer real property.* Within 90 days after receipt of a proposal, DOE will notify, by letter, the person or entity that submitted the proposal of DOE's decision whether or not a transfer of the real property by sale or lease is in the best interest of the Government. If DOE determines the transfer is in the Government's best interest, then the Field Office Manager will begin development of a transfer agreement.

(c) *Congressional committee notification.* DOE may not transfer real property under this part until 30 days have elapsed after the date DOE notifies congressional defense committees of the proposed transfer. The Field Office Manager will notify congressional defense committees through the Secretary of Energy.

(d) *Transfer.* After the congressional committee notification period has elapsed, the Field Office Manager:

- (1) Finalizes negotiations of a transfer agreement, which must include a provision stating whether indemnification is or is not provided;
- (2) Ensures that any required environmental reviews have been completed; and
- (3) Executes the documents required for the transfer of property to the buyer or lessee.

§ 770.8 May DOE transfer real property at defense nuclear facilities for economic development at less than fair market value?

DOE generally attempts to obtain fair market value for real property transferred for economic development, but DOE may agree to sell or lease such property for less than fair market value if the statutory transfer authority used imposes no market value restriction, and:

- (a) The real property requires considerable infrastructure improvements to make it economically viable, or
- (b) A conveyance at less than market value would, in the DOE's judgment, further the public policy objectives of the laws governing the downsizing of defense nuclear facilities.

§ 770.9 What conditions apply to DOE indemnification of claims against a person or entity based on the release or threatened release of a hazardous substance or pollutant or contaminant attributable to DOE?

(a) If an agreement for the transfer of real property for economic development contains an indemnification provision, the person or entity requesting indemnification for a particular claim must:

(1) Notify the Field Office Manager in writing within two years after such claim accrues under § 770.11 of this part;

(2) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with evidence or proof of the claim;

(3) Furnish the Field Office Manager, or such other DOE official as the Field Office Manager designates, with copies of pertinent papers (e.g., legal documents) received by the person or entity;

(4) If requested by DOE, provide access to records and personnel of the person or entity for purposes of defending or settling the claim; and

(5) Provide certification that the person or entity making the claim did not contribute to any such release or threatened release.

(b) DOE will enter into an indemnification agreement if DOE determines that indemnification is essential for the purpose of facilitating reuse or redevelopment.

(c) DOE may not indemnify any person or entity for a claim if the person or entity contributed to the release or threatened release of a hazardous substance or pollutant or contaminant that is the basis of the claim.

(d) DOE may not indemnify a person or entity for a claim made under an indemnification agreement if the person or entity refuses to allow DOE to settle or defend the claim.

§ 770.10 When must a person or entity, who wishes to contest a DOE denial of request for indemnification of a claim, begin legal action?

If DOE denies the claim, DOE must provide the person or entity with a notice of final denial of the claim by DOE by certified or registered mail. The person or entity must begin legal action within six months after the date of mailing.

§ 770.11 When does a claim "accrue" for purposes of notifying the Field Office Manager under § 770.9(a) of this part?

For purposes of § 770.9(a) of this part, a claim "accrues" on the date on which the person asserting the claim knew, or reasonably should have known, that the

injury to person or property was caused or contributed to by the release or threatened release of a hazardous substance, pollutant, or contaminant as a result of DOE activities at the defense nuclear facility on which the real property is located.

[FR Doc. 00-4787 Filed 2-24-00; 4:07 pm]

BILLING CODE 6450-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-262-AD; Amendment 39-11602; AD 2000-04-19]

RIN 2120-AA64

Airworthiness Directives; Dassault Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, that currently requires a revision to the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions. This amendment adds a new requirement for operators to adjust the thrust reverser handle stop, install new wiring, and modify the Digital Electronic Engine Control (DEEC) software, which terminates the AFM revision. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent flightcrew use of erroneous N1 thrust setting information displayed on the Engine Indication Electronic Display (EIED), which could result in in-flight shutdown of engine(s).

DATES: Effective April 4, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 4, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Dassault Falcon Jet, P.O. Box 2000, South Hackensack, New Jersey 07606. This information may be examined at the Federal Aviation Administration

(FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 97-21-16, amendment 39-10202 (62 FR 60773, November 13, 1997), which is applicable to certain Dassault Model Mystere-Falcon 50 series airplanes, was published in the *Federal Register* on November 3, 1999 (64 FR 59685). The action proposed to retain the requirement to revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) to include procedures to use certain values to correctly gauge the minimum allowable N1 speed of the operative engines during operation in icing conditions, and add a new requirement for adjustment of the thrust reverser handle stop, installation of new wiring, and modification of the Digital Electronic Engine Control (DEEC) software, which would terminate the need for the AFM revision.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Requests To Revise Applicability

One commenter, the manufacturer, suggests that the applicability be revised to exclude airplanes on which Dassault Factory Modification M2193 has been accomplished. The commenter notes that this modification is equivalent to Dassault Service Bulletin F50-276, dated June 24, 1998 (which was cited in the AD as the appropriate source of service information). The FAA concurs. The actions described in the referenced Dassault service bulletin constitute terminating action for the requirements of this AD; therefore, airplanes on which the service bulletin has been accomplished are excluded in the applicability of the AD. Since Dassault Modification M2193 is equivalent to that service bulletin, the FAA has revised the final rule to also exclude airplanes having this production modification.

The same commenter also requests that the applicability of the proposed AD be revised in regard to the listing of affected airplanes. The commenter notes that the proposed AD applies to "serial numbers 251, 253, and subsequent, equipped with Allied-Signal TFE731-40 engines * * *." The commenter suggests that the applicability be expanded to include any Falcon 50 series airplane retrofitted with Dassault Service Bulletin F50-280 or Dassault Factory Modification 2518, since this service bulletin describes procedures for installation of Allied-Signal TFE731-40 engines on any Model Mystere-Falcon 50 series airplane, including serial numbers prior to 251.

The FAA does not concur. The FAA acknowledges that all airplanes equipped with the referenced engine type should also be subject to the requirements of this AD, if all actions required by this AD have not been accomplished. However, after further discussions with the manufacturer, the FAA has been advised that Dassault Service Bulletin F50-280 is in the process of review, but has not been released, nor has the equivalent Dassault Modification 2518 been approved. The FAA does not consider it appropriate to delay issuance of this final rule while awaiting such approval; therefore, no change is made to the applicability of the AD in this regard. If the engine retrofit service information is approved, the FAA will consider further rulemaking, if necessary, to apply the requirements of this AD to additional airplanes.

Request To Revise Number of Affected Airplanes

The same commenter states that the estimate of 7 affected airplanes is incorrect in the cost impact information of the proposed AD, since other airplanes may have the Allied-Signal TFE731-40 engines installed as a retrofit, as discussed in the previous comment. The FAA infers that the commenter is requesting that the number of affected airplanes be increased. However, since the previously described engine retrofit service information has not been approved, no airplanes on the U.S. Register should have had such a modification at this time. No change to the AD is necessary in this regard.

Request To Revise Cost Estimate

The same commenter states that the estimate of 2 work hours is conservative in that it does not include hours necessary to gain access, remove and replace the unit, and perform engine ground runs and/or flight tests. The

APPENDIX B

CORRESPONDENCE LETTERS



United States Department of the Interior

FISH AND WILDLIFE SERVICE

446 Neal Street
Cookeville, TN 38501

January 19, 2005

Mr. James L. Elmore, Ph.D.
U.S. Department of Energy
Oak Ridge Operations Office
P.O. Box 2001
Oak Ridge, Tennessee 37831

Re: FWS#05-0436

AMESH
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DOCS NO. 201878
DATE RECEIVED JAN 25 2005
FILE CODE _____

Dear Dr. Elmore:

Thank you for your letter and enclosures received December 20, 2004, regarding the preparation of an Environmental Assessment (EA) by the Department of Energy (DOE) for the proposed transfer of Parcel ED-6 of the Oak Ridge Reservation (ORR), formerly known as Self Sufficiency Parcel D, to the City of Oak Ridge in Anderson County, Tennessee. U.S. Fish and Wildlife Service personnel have reviewed the information submitted and offer the following comments for consideration.

According to our records, the following federally listed endangered species may occur on or near the Parcel ED-6 property:

gray bat (*Myotis grisescens*)
Indiana bat (*Myotis sodalis*)

Qualified biologists should assess potential impacts and determine if the proposed land transfer may affect the species. We recommend that you submit a copy of your assessment and the draft EA to this office for review and concurrence. A finding of "may affect" could require the initiation of formal consultation procedures.

The EA should discuss the conclusions, recommendations, and resolutions that emanated from the Oak Ridge Land Use Planning Process which was conducted in 2001 and 2002. This strategic planning process sanctioned by DOE, which included the participation of a wide variety of stakeholders for the ORR, evaluated a variety of scenarios for potential uses of DOE lands in the western part of the ORR. Although the City of Oak Ridge has determined that the most likely use of this property would be residential development, this statement diverges from consensus opinions expressed by the Oak Ridge Land Use Planning Focus Group.

During the development of the final report of the Oak Ridge Land Use Planning Focus Group, University of Tennessee personnel performed a sensitive habitat analysis of five key areas located in the western portion of the ORR. One of those areas, Area 7, included a significant portion of Parcel ED-6. Approximately 863 acres of deep forest habitat were identified in Area 7. Area 7 was deemed a valuable source of deep forest habitat and the conclusion of the UT researchers was that "large forested tracts are much less common on the ORR and more accurately meet habitat requirements for rare species." A substantial portion of Parcel ED-6 would be considered core interior forest breeding bird habitat. We believe that Parcel ED-6 provides significant nesting habitats for a variety of neo-tropical migratory birds, of which many species are currently in decline.

The EA should evaluate a variety of alternatives which closely resemble the four scenarios that were documented in the final report (i.e., greenspace emphasis, development emphasis, modified ED-3, and less development). The most current biological data, including surveys for endangered species and migratory birds, should be discussed in detail. The EA should also evaluate the cumulative effects of the continuing disposition of DOE ORR properties to the City of Oak Ridge for economic development purposes on legally protected species, including migratory birds. This analysis should not only focus on DOE-managed lands on the ORR, but also include a larger geographic analysis which takes the ecological condition of the entire Ridge and Valley Physiographic Province into consideration. This may necessitate the development of an Environmental Impact Statement.

These constitute the comments of the U.S. Department of the Interior, provided in accordance with provisions of the Endangered Species Act (87 Stat. 884, as amended: 16 U.S.C. 1531 et seq.), the Migratory Bird Treaty Act (16 U.S.C. 703-711), the Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.), and the National Environmental Policy Act (42 U.S.C. 4321-4347; 83 Stat. 852). We appreciate the opportunity to comment. Should you have any questions or need further assistance, please contact Steve Alexander of my staff at 931/528-6481, ext. 210, or via e-mail at steven_alexander@fws.gov.

Sincerely,



Lee A. Barclay, Ph.D.
Field Supervisor

xc Pat Parr, ORNL, Oak Ridge
Dave McKinney, TWRA, Nashville
David Harbin, TDEC, Nashville
John Owsley, TDEC, Oak Ridge



TENNESSEE HISTORICAL COMMISSION
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
2941 LEBANON ROAD
NASHVILLE, TN 37243-0442
(615) 532-1550

April 6, 2005

Mr. Gary Hartman
Department of Energy
Oak Ridge Office
Post Office Box 2001
Oak Ridge, Tennessee 37831

RE: DOE, ARCHAEOLOGICAL ASSESSMENT, PARCELS ED-6 AND 7 TRANSFER,
OAK RIDGE, ROANE COUNTY, TN

Dear Mr. Hartman:

At your request, our office has reviewed the above-referenced archaeological survey report in accordance with regulations codified at 36 CFR 800 (Federal Register, December 12, 2000, 77698-77739). Based on the information provided, we find that the project area contains no archaeological resources eligible for listing in the National Register of Historic Places.

If project plans are changed or archaeological remains are discovered during construction, please contact this office to determine what further action, if any, will be necessary to comply with Section 106 of the National Historic Preservation Act.

Your cooperation is appreciated.

Sincerely,

Herbert L. Harper
Executive Director and
Deputy State Historic
Preservation Officer

HLH/jmb

AMESH
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